Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

IN RE JOSEPH GOLDEN, ANGELO DEITOS, EDWARD JONES, IDA THOMASON, LUTHER PALMER, CAROLINE FORYS, JOSEPHINE THOMAS, JOHN HOYLE, ARTHUR SALLIS, THELMA SONGER, JOHN W. GALLOWAY and ROGER FARRAR, on behalf of themselves and a class of persons similarly situated,

Petitioners,

v.

KELSEY-HAYES COMPANY and
HAYES WHEELS INTERNATIONAL, INC.,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Seventh Amendment require a jury trial in a contract action for collectively bargained retiree health care benefits brought under Section 301 of the Labor Management Relations Act when the retirees seek damages and declaratory relief as well as preliminary and permanent injunctive relief.

PARTIES BELOW

Petitioners Joseph Golden, Angelo Deitos, Edward Jones, Ida Thomason, Luther Palmer, Caroline Forys, Josephine Thomas, John Hoyle, Arthur Sallis, Thelma Songer, John W. Galloway and Roger Farrar were petitioners in the court below as well, for a writ of mandamus. Respondents Kelsey-Hayes Company and Hayes Wheels International, Inc. were respondents as well in the court below.

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Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

PETITION FOR A WRIT OF CERTIORARI

Joseph Golden and eleven other named Plaintiffs (the "Plaintiffs"), on behalf of a certified class of nearly 3,000 retired former employees of the Kelsey-Hayes Company, hereby petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit, filed on January 18, 1996, denying Plaintiffs' petition for a writ of mandamus in In re Joseph Golden, Angelo Deitos, Edward Jones, Ida Thomason, Luther Palmer, Caroline Forys, Josephine Thomas, John Hoyle, Arthur Sallis, John W. Galloway and Roger Farrar,

on behalf of themselvs and a class of persons similarly situated.

OPINIONS BELOW

The Court of Appeals' opinion is reported at 73 F.3d 648 (6th Cir. 1996) and is reproduced at pages 1a-34a of the Appendix to this certiorari petition (hereafter "Pet. App."). The District Court Order granting the Plaintiffs' motion for preliminary injunction is reported at 845 F. Supp. 410 (E.D. Mich. 1994) and is reproduced at Pet. App. 53a-66a. The unreported District Court Order accepting the Magistrate Judge's Report and Recommendation and striking Plaintiffs' jury demand is reproduced at Pet. App. 51a-52a. The unreported Magistrate Judge's Report and Recommendation that Plaintiffs' jury demand should be stricken is reproduced at Pet. App. 35a-50a.

JURISDICTIONAL STATEMENT

The Court of Appeals' opinion was entered on January 18, 1996. (Pet. App. 1a). No petition for rehearing was filed. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Seventh Amendments to the United States Constitution and § 301 of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 185.

The Seventh Amendment provides:

> In Suits at common law, where the amount in controversy shall exceed twenty dollars, the right to trial by jury shall be preserved, and no fact tried to a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Section 301 of the LMRA provides in pertinent part:

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

Plaintiffs represent a class of retired employees of, and surviving spouses of retired employees of, Kelsey-Hayes.[1] (Pet. App. 2a). During their employment, Plaintiffs were members of collective bargaining units represented by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW" or the "Union") and five of its local unions, each representing particular Kelsey-Hayes facilities. (Pet. App. 2a). Pursuant to collective bargaining with the UAW, Kelsey-Hayes agreed to provide continuing medical benefits to Plaintiffs during their retirement. (Pet. App. 2a).

In April of 1993, Kelsey-Hayes announced that the medical benefits provided to retirees would be unilaterally reduced. (Pet. App. 3a). Beginning on January 1, 1994, retirees were required to make monthly contributions to retain medical coverage, were required to pay part of the cost of medical care through deductibles and co-payments, were subject to a "lifetime cap" on their benefits and no longer received partial reimbursement for the cost of Medicare Part B premiums. (Pet. App. 3a).

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[1] In 1992, Kelsey-Hayes split into two corporations, Kelsey-Hayes Company and Hayes-Wheels International, Inc. (Pet. App. 3a). They will be referred to collectively as Kelsey-Hayes. After the complaint was filed, John Hoyle died. Stephen Santangelo replaced him as a named class plaintiff in the amended complaint.

On November 12, 1993, Plaintiffs challenged Kelsey-Hayes' right to reduce their medical benefits by filing an action for breach of the labor agreements under § 301 of the LMRA, 29 U.S.C. § 185. (Pet. App. 4a, 5a).[2] They sought damages as well as injunctive and declaratory relief and demanded a jury trial. (Pet. App. 4a).

On December 23, 1993, Plaintiffs filed a motion for preliminary injunction, asking the court to order Kelsey-Hayes to maintain the benefits at their pre-reduction levels during the litigation. (Pet. App. 4a). The district court scheduled a hearing on the motion for January 1, 1994, after the reduction became effective. (Pet. App. 4a).

On March 14, 1994, the district court granted Plaintiffs' motion and entered a preliminary injunction. (Pet. App. 4a).[3] The injunction took effect on April 18, 1994 when the Plaintiffs posted the required injunction bond. (Pet. App. 4a). The issue of damages for the period from the implementation of the reductions on January 1, 1994 through April 18, 1994 remains for final determination after trial.[4]

On April 29, 1994 Kelsey-Hayes appealed the district court's grant of the preliminary injunction. (Pet. App. 4a).

On February 28, 1995, the district court granted Kelsey-Hayes' motion to strike Plaintiffs' jury demand.

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[2] The Complaint also included a separate count under § 502 of ERISA, 29 U.S.C. § 1132.

[3] Prior to the hearing on the preliminary injunction, a collective bargaining agreement covering two of the facilities involved resulted in restoration of most of the benefits for retirees from those two locations, subject to the final resolution of the litigation. The preliminary injunction motion was withdrawn for those members of the class who had worked at those two facilities. The preliminary injunction therefore covers retirees from three of the original five plants involved. (Pet. App. 4a).

[4] On April 25, 1995 the district court certified the class, which consists of approximately 2,960 retirees and surviving spouses. (Pet. App. 4a, n.4).

(Pet. App. 5a). On May 4, 1995, the Plaintiffs filed a petition for a writ of mandamus with the Sixth Circuit challenging that decision. (Pet. App. 5a).

On January 18, 1996, the Sixth Circuit issued a decision on both Kelsey-Hayes' appeal from the grant of preliminary injunction and Plaintiffs' mandamus petition. The Sixth Circuit unanimously affirmed the district court's grant of the preliminary injunction, but, in a 2-1 decision, denied Plaintiffs' mandamus petition.[5] As to the jury trial question, the panel majority noted that the Complaint sought "declaratory relief, injunctive relief, and damages" pursuant to § 301 for Kelsey-Hayes' alleged breach of the labor contract. (Pet. App. 17a). The court also noted that the constitutional right to a jury trial in § 301 actions seeking damages for alleged breaches of labor agreements is "generally preserved." (Pet. App. 20a). The court then characterized the legal issues presented by Plaintiffs—their claim for damages for contract breach—as "incidental" to the equitable issues presented by Plaintiffs' request for injunctive relief. (Pet. App. 23a-24a). On this basis, the court held that Plaintiffs had no right to a jury trial. Plaintiffs now seek review of this decision.

REASONS FOR GRANTING THE WRIT

The Writ must be granted because the Sixth Circuit's decision represents an unprecedented encroachment on Plaintiffs' constitutional right to a jury trial. This Court has repeatedly stressed that the Seventh Amendment right cannot be denied because a court chooses to characterize the legal issue presented as "merely incidental" to the equitable issues. *Tull v. United States*, 481 U.S. 412, 425 (1987); *Dairy Queen v. Wood*, 369 U.S. 469, 470 (1962). The Sixth Circuit's decision conflicts with this principle because it is premised precisely on that impermissible characterization. In denying Plaintiffs a jury

[5] Judge Boggs wrote a lengthy dissent on the jury trial issue relevant here. (Pet. App. 27a-34a).

trial on their contractual action for damages, the Sixth Circuit committed serious constitutional error.

The Writ must also be granted because the Sixth Circuit decision creates a direct conflict with the decisions of two other Circuit Courts of Appeal on the same issue —the right to a jury trial under § 301 for breach of a collective bargaining agreement to provide retiree health care benefits. Review by this Court is necessary to resolve the conflicting decisions on this important and recurring question.

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRIOR PRONOUNCEMENTS.

a. "Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935) (quoted in *Beacon Theatres v. Westover*, 359 U.S. 500, 501 (1959) and *Teamsters v. Terry*, 494 U.S. 558, 565 (1990).

The principles governing a determination of whether the right to a jury trial covers a particular claim are well settled:

> To determine whether a particular action will resolve legal rights, and therefore give rise to a jury trial right, we examine both the nature of the issues involved and the remedy sought. . . . " 'First, we compare the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity. Second, we examine the remedy sought and determine whether it is legal or equitable in nature.' " . . . The second inquiry is the more important in our analysis. *Wooddell v. Teamsters*, 502 U.S. 93, 97 (1991) (quoting *Teamsters v. Terry, supra*, 494 U.S. at 565) (citations omitted).

b. Actions to enforce contracts—including collective bargaining agreements—are quintessentially legal in char-

acter.[6] As the Sixth Circuit properly recognized, the answer to the first inquiry supports the conclusion that Plaintiffs are entitled to a jury trial. (Pet. App. 20a).

The court below, however, disregarded prior decisions of this Court in its approach to the second inquiry described above—"examin[ing] the remedy sought and determin[ing] whether it is legal or equitable in nature." That question can be stated as follows: when a plaintiff seeks both damages and injunctive relief in a contract enforcement action, and is awarded preliminary injunctive relief after some damages have already been incurred, does the plaintiff thereby forfeit the constitutional right to have a jury determine his contract claims that would otherwise plainly attach.

In a series of decisions, this Court has made it clear that "only under the most imperative circumstances, circumstances which . . . we cannot now anticipate, can the right to a jury trial of legal issues be lost through prior determination of equitable claims." *Beacon Theatres v. Westover*, 359 U.S. 500, 510-511 (1959) (footnote omitted). In *Dairy Queen v. Wood*, 369 U.S. 469 (1962), this Court rejected "[a]t the outset" the ground on which the Sixth Circuit relied. The right to a jury trial may not be lost as to legal issues because a court chooses to characterize them as "incidental" to the equitable issues. "[O]ur previous decisions make it plain that no such rule may be applied in the federal courts." 369 U.S. at 470.

The force of *Beacon Theatres* and *Dairy Queen* have not diminished over time. ["I]f a 'legal claim is joined with an equitable claim, the right to a jury trial on the legal claim, including all issues common to both claims, remains intact. The right cannot be abridged by charac-

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[6] "As an action on a debt allegedly due under a contract, it would be difficult to conceive of an action of a more traditionally legal character." *Dairy Queen v. Wood*, 369 U.S. 469, 477 (1962). See also *Teamsters v. Terry, supra*, 494 U.S. at 569-70 ("The § 301 issue . . . is comparable to a breach of contract claim—a legal issue.") (footnote omitted).

terizing the legal claim as 'incidental' to the equitable relief sought.' " *Tull v. United States*, 481 U.S. 412, 425 (1987) (quoting *Curtis v. Loether*, 415 U.S. 189, 196, n.11 (1974).

As the dissenting judge below noted, these principles dictate that Plaintiffs here cannot lose their right to a jury trial on the plainly legal issue of the contract's meaning and the damages flowing from its breach merely because the Plaintiffs have also requested injunctive relief. In reaching the opposite conclusion, the panel majority relied on dicta from *Teamsters v. Terry, supra,* which in no way supports the decision it reached. In *Terry*, this Court stated that "a monetary award 'incidental to or intertwined with injunctive relief may be equitable." 494 U.S. at 571.[7] This is a plainly correct historical statement: prior to the merger of law and equity, courts of equity had discretion to order monetary relief in order to provide complete relief. After the merger of law and equity, that

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[7] For this proposition, the Court in *Terry* quoted from *Tull, supra,* 481 U.S. at 424 and cited *Mitchell v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 291-292 (1960). In the relevant passage of *Tull*, however, the Court rejected an argument similar to that endorsed by the Sixth Circuit in the present case: that since courts of equity could provide monetary awards incidental to or intertwined with injunctive relief, the damages portion of a suit combining both legal and equitable claims should be deemed "incidental" to the equitable claims for purposes of the Seventh Amendment as well. The Court in *Tull* noted that, among the "flaws" in that argument was that, in a situation where "each kind of relief is separably authorized" by statute, the right to a jury trial "cannot be abridged by characterizing the legal claim as incidental to the equitable relief sought." 481 U.S. at 425 (quoting *Curtis v. Loether, supra,* 415 U.S. at 196, n.11) *Mitchell* addressed § 17 of the Fair Labor Standards Act of 1938, entitled "Injunction proceedings," under which courts have jurisdiction "to restrain violations" of § 15 of the Act. The court of appeals held that district courts had no authority to order the payment of lost wages. This Court reversed, holding that traditional principles of equity permitted courts to provide complete relief which, in light of statutory purposes, included back pay. 361 U.S. at 291-92. *Mitchell* did not involve the right to a jury trial.

principle has continued vitality mostly where statutes provide for only equitable relief; in that situation, the modern court still has discretion to order monetary relief if it is necessary to provide complete justice. *Mitchell v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 291-292 (1960).

Read in light of this history, the passage from *Terry* clearly means that, if a plaintiff seeks *only* equitable relief—either by choice or because the relevant statute provides only equitable jurisdiction—an otherwise wholly equitable cause of action will not become a legal cause of action simply because a court exercises its equitable discretion to afford a complete remedy by awarding monetary relief. In other words, the dicta in *Terry* merely refers to a doctrine which permitted pre-merger courts of equity to award monetary relief to effect complete justice. In such cases, this monetary "incident" of equitable relief will not be the basis for granting a jury trial in what is a solely equitable action. Only this reading of that passage is consistent with the supporting citations used by the Court in *Terry*. And only this reading is consistent with the principles announced by the Court since *Beacon Theatres*.

The Sixth Circuit read this passage from *Terry* to have a drastically different meaning. According to the panel majority, this passage of *Terry* means that, when a plaintiff seeks both legal and equitable remedies, a court can examine the relief requested and, if it chooses to characterize the legal issues presented as "merely incidental to [the] equitable" issues presented, deny a jury trial. (Pet. App. 24a). This is so, according to the court, even when the underlying cause of action is undeniably legal in character. (Pet. App. 20a, 24a).

There is nothing in the decisions prior to *Terry* to suggest such a result. *Terry* did not even hint that the passage relied upon by the panel majority was intended to replace

the firmly ensconced principles of *Beacon Theatres, Dairy Queen* and *Tull.* Indeed, *Terry* itself is a ringing endorsement of the Seventh Amendment right to a trial by jury. Nevertheless, the panel majority held that the brief passage of dicta from *Terry* has, in effect, swept the slate clean. In a dramatic departure from settled precedent, the Sixth Circuit has endorsed a premise for denying a jury trial which this Court has repeatedly emphasized is impermissible. "The right [to a jury trial] cannot be abridged by characterizing the legal claim as 'incidental' to the equitable relief sought." *Tull v. United States, supra,* 481 U.S. at 425. As Judge Boggs correctly noted in his dissent below, such a result is not justified by *Terry* and is directly contrary to prior holdings of this Court. (Pet. App. 28a-29a). As Judge Boggs stated, "no court has ever used an inquiry into remedies to make a patently legal issue equitable." (Pet. App. 30a, n.2).

The panel majority cites the *Restatement (Second) of Contracts* for the proposition that "an equity court may award 'damages and other relief' as may be necessary to afford complete relief." (Pet. App. 23a). Of course, the *Restatement* does not address the constitutional right to a jury trial. And, there is no reference whatsoever in the cited portion of the *Restatement* to an "equity court." Since the merger of law and equity in 1938, federal courts dispense both equitable and legal relief in a single action. Moreover, the *Restatement* was referring to damages as a legal, as opposed to an equitable, remedy. Thus, in the sentence immediately preceding the language quoted by the panel majority in the *Restatement* illustration, damages are specifically distinguished from equitable relief.

> *In addition to any equitable relief granted,* a court may also award damages or other relief. (*Restatement, supra,* § 358, Illustration 2.c.) (emphasis supplied).

It was the merger of law and equity, after all, that led this Court in *Beacon Theatres* to re-evaluate, in light of

the Seventh Amendment, "the justification for equity's deciding legal issues once it obtains jurisdiction." 359 U.S. at 509-510. Upon re-evaluation, this Court came down firmly on the side of the Seventh Amendment right to a jury trial when legal and equitable claims are joined in a single civil action.

The equitable relief Plaintiffs seek here is clearly in aid of their legal action, *not* the other way around. As such, "any blending with a [legal] claim . . . of a demand for equitable relief in aid of the legal action" cannot impair a plaintiff's Seventh Amendment right to a jury trial on the underlying legal claim. *Scott v. Neely*, 140 U.S. 106, 109-110 (1891). The failure of the Sixth Circuit panel majority to follow this "long-standing principle," *Beacon Theatres, supra*, 359 U.S. at 510, constitutes serious constitutional error.

Under the governing constitutional principles, there are two independent reasons why a jury trial is required here. *First*, Plaintiffs have already suffered contractual damages during the period between the implementation of the reduction in benefits and the effective date of the preliminary injunction. Plaintiffs sought damages for this breach of contract and—under normal Seventh Amendment principles—would plainly be entitled to a jury determination on basic legal questions of contract formation, breach and damages.

The panel majority erred in determining that these damages are 'incidental' to an action for injunctive relief or specific performance. Monetary relief in equity is discretionary. The damages Plaintiffs seek flow as a matter of course from the breach.[8] Plaintiffs here are plainly

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[8] In *Curtis v. Loether*, 415 U.S. 189, 197 (1974), the Court compared the discretionary nature of back pay under Title VII of the Civil Rights Act of 1964 with the mandatory nature of the relief under § 812 of the Civil Rights Act of 1968 in concluding the plaintiff in a § 812 action had a right to a jury trial. See also

entitled by § 301 to seek damages for breach of contract. And, as the majority below recognized, they have done so. Those facts alone require that the jury must first determine the legal issues to preserve Plaintiffs' Seventh Amendment rights. The panel majority misread *Terry* to overturn more than 30 years of settled law.

Second, even if the panel majority below were correct about these pre-injunction damages being merely 'incidental' to the equitable relief sought, Plaintiffs here are entitled to a jury trial for another, more fundamental, reason. Section 301 permits plaintiffs to seek either legal relief in the form of damages or equitable relief in the form of injunctions or specific performance. But, injunctive relief is discretionary and, in order to obtain it, potential § 301 plaintiffs must show more than a simple breach of contract and damages. They must also show that their legal remedy is inadequate, that the harm to them absent injunctive relief is irreparable, and that the equities tip in their favor.[9] *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 311-12 (1982). It is certainly possible that some § 301 plaintiffs are so confident of their position that they will request only injunctive relief. But, in doing so, such plaintiffs would thereby abandon the right to recover damages should they prevail on the issue of contract breach but fail to convince the court that the harm is "irreparable," that there is no adequate remedy at law, or that the equities tip in their favor. Such

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Albemarle Paper Co. v. Moody, 422 U.S. 405, 443 (1975) (Rehnquist concurring) (when discretion replaced by monetary awards which flow as a matter of course, award cannot properly be considered equitable).

[9] The court below observed that "[i]mplicit in the issuance of a preliminary injunction . . . is a conclusion that the plaintiff has no adequate remedy at law." (Pet. App. 25a-26a). This is certainly true. But the conclusion that there is no "adequate" remedy at law—and that preliminary injunctive relief is therefore necessary prior to trial—certainly does not mean that legal relief is unavailable altogether, or that the court is thereafter required, after trial, to continue the injunction as permanent.

an approach to litigation is both uncommon and unwise. Instead, the § 301 plaintiff who sincerely believes that he is entitled to injunctive relief will generally seek both legal relief in the form of damages and a declaratory judgment and equitable relief in the form of an injunction. And, as this Court has made clear since *Beacon Theatres*, a plaintiff who adds a count for injunctive relief does not thereby lose a jury trial on the factual issues that are common to both the legal and equitable issues.

The fatal flaw of the Sixth Circuit's position is that, if a trial court, in its discretion, determines *after* trial that a Plaintiff is *not* entitled to injunctive relief, damages are all that remain. But, under the Sixth Circuit's approach, at that point the right to a jury trial has already been lost on all legal issues involved in a contract action, including, not only the extent of damages, but also just what the contract is and how it was breached. *Dairy Queen v. Wood*, 369 U.S. 469, 479 (1962). It is for this very reason that this Court has stressed that when legal and equitable issues are combined in a single lawsuit, a plaintiff is entitled to a have a jury determine all common issues *first* in order to protect the Seventh Amendment right to a jury trial.

The court below failed entirely to even acknowledge this issue, and focused exclusively on the pre-injunction damages as the only potential source for Plaintiffs' right to a jury trial. As the decisions discussed above make clear, however, Plaintiffs are entitled to a jury trial on all issues common to both equitable and legal claims, whenever such alternative claims are both available and properly pleaded.

II. THE DECISION OF THE COURT BELOW CONFLICTS WITH DECISIONS OF THE SEVENTH AND ELEVENTH CIRCUITS.

Two other courts of appeals have addressed the identical question since this Court decided *Terry*. Those decisions are directly contrary to that reached by the panel majority below in indistinguishable factual contexts.

In *Senn v. United Dominion Industries, Inc.*, 951 F.2d 806, 813-814 (7th Cir. 1992), *cert. denied*, 113 S.Ct. 2992 (1993), a class of retirees sought both injunctive relief and damages in a § 301 suit after their former employer modified their medical benefits. The court, in fact, found that the retirees were "primarily" seeking injunctive relief. 951 F.2d at 813. In direct conflict with the decision below, the Seventh Circuit concluded that the retiree-plaintiffs retained their right to a jury trial on the legal issues despite the presence of an alternative prayer for injunctive relief. As the Seventh Circuit reasoned "[i]t is well settled that when legal and equitable relief are separately authorized by statute, and the 'legal claim is joined with [the] equitable claim, the right to jury trial on the legal claim, including all issue common to both claims, remains intact." 951 F.2d at 813, (quoting *Tull, supra*, 481 U.S. at 424-425, quoting, in turn, *Curtis v. Loether, supra*, 415 U.S. at 196, n.11).[10]

The Court of Appeals for the Eleventh Circuit recently reached the same result. In *Stewart v. KHD Deutz America*, 75 F.3d 1522 (11th Cir. 1996), a class of retirees sought both injunctive relief and damages under § 301 in response to their former employer's modification of their medical coverage. The Eleventh Circuit concluded that the retirees were entitled to a jury trial, citing *Terry* for the proposition that the right to a jury trial "may also attach to a cause of action that encompasses both legal and equitable issues."[11] 75 F.3d at 1526 n.3.

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[10] In *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603 (7th Cir. 1993) (en banc), *cert. denied*, 114 S.Ct. 291 (1993), the Seventh Circuit re-examined the *Senn* decision as it related to the admissibility of extrinsic evidence. The lead, concurring and dissenting opinions all presumed that the plaintiffs had a right to a jury trial. 993 F.2d at 609, 611 and 619.

[11] In a case not involving retiree medical benefits, the District of Columbia Court of Appeals employed a similar analysis, finding that the passage from *Terry* on which the panel majority relied applies only where the claim for monetary relief arises "derivately

In direct conflict with *Senn* and *Stewart*, the court below concluded that, although: 1) an action for breach of contract is one at common law; 2) § 301 provides legal relief in the form of damages; 3) the Plaintiffs' complaint included a claim for damages; and 4) Plaintiffs actually *suffered* damages, their claims were "entirely equitable" because the "monetary relief is only incidental." (Pet. App. 26a). And, on the basis of this characterization, the court below held that Plaintiffs had no right to have a jury determine any part of their contract claim.

There is, therefore, a direct conflict between the decision of the Sixth Circuit below and those of the Seventh and Eleventh Circuits addressing identical issues.

III. THE DECISION BELOW DEALS WITH AN IMPORTANT AND RECURRING ISSUE.

As the dissenting judge recognized, the result reached by the Sixth Circuit in this case will have broad impact and will lead to bizarre results. Under the reasoning of the panel majority, when plaintiffs seek only damages, they will retain their right to a jury trial on the issues of contract formation and breach as well. If they add a claim for injunctive relief, they will lose their constitutional right to a jury determination of those basic legal questions.

As Judge Boggs observed:

> For many plaintiffs, the equitable relief will not be important enough to risk the venerable and crucial right to trial by jury. Others will wait to seek an injunction by an amendment to the pleadings after the jury is empaneled (if possible), or by bringing a new action utilizing the collateral estoppel effect of the jury's liability determinati[on] . . . . (Pet. App. 32a)

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from the equitable injunction powers granted by the statute" rather than being separately and independently available and independently pleaded. *Crocker v. Piedmont Aviation*, 49 F.3d 735, 748 (D.C. Cir. 1995).

The merger of the courts of law and equity was intended to eliminate the incentives and necessity for precisely this type of maneuvering. "Purely procedural impediments to the presentation of any issue by any party, based on the difference between law and equity, were destroyed." *Ross v. Bernard*, 396 U.S. 531, 539-540 (1970).

This question is critical and recurring. As Judge Boggs stated in dissent:

> The Seventh Amendment right to a jury trial should not be curtailed based on this court's convoluted logic. The error is grave and the issue important. (Pet. App. 34a).

The issue will arise whenever parties choose to pursue both legal and equitable relief in a breach of contract action. Under the rule announced by the court below, combining those two avenues for redress will result in a balancing test of the perceived importance of legal versus equitable claims. If allowed to stand, that rule will have broad impact and will result in precisely the sorts of procedural maneuvering that the merger of law and equity was intended to avoid.

CONCLUSION

For the reasons set forth above, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: April 17, 1996

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APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Nos. 94-1463; 95-1474

JOSEPH GOLDEN, ANGELO DEITOS, EDWARD JONES, IDA THOMASON, LUTHER PALMER, CAROLINE FORYS, JOSEPHINE THOMAS, JOHN HOYLE, ARTHUR SALLIS, THELMA SONGER, JOHN W. GALLOWAY and ROGER FARRAR,
Plaintiffs-Appellees,

v.

KELSEY-HAYES COMPANY,
Defendant-Appellant (94-1463).

In re: JOSEPH GOLDEN, ANGELO DEITOS, EDWARD JONES, IDA THOMASON, LUTHER PALMER, CAROLINE FORYS, JOSEPHINE THOMAS, JOHN HOYLE, ARTHUR SALLIS, THELMA SONGER, JOHN W. GALLOWAY and ROGER FARRAR, on behalf of themselves and a class of persons similarly situated,
Petitioners (95-1474).

On Appeal from the United States District Court
for the Eastern District of Michigan
And on Petition for Writ of Mandamus

Decided and Filed January 18, 1996

Before: BROWN, BOGGS, and NORRIS, Circuit Judges.

BROWN, J., delivered the opinion of the court, in which NORRIS, J., joined. BOGGS, J. (pp. 28-35), delivered a separate opinion concurring in part and dissenting in part.

BAILEY BROWN, Circuit Judge. This opinion resolves an appeal of a district court's grant of a preliminary injunction and resolves a petition to this court for a writ of mandamus. Both matters arise from the same underlying lawsuit regarding whether the plaintiffs are entitled to continuing health insurance benefits. First, as indicated, the defendants appeal the district court's grant of a preliminary injunction. Second, the plaintiffs petition this court for a writ of mandamus ordering the district court to allow them a jury trial. After summarizing the relevant facts giving rise to the district court litigation, we will address each issue in turn.

I. FACTS

The plaintiffs are retired employees of, and surviving spouses of retired employees of, Kelsey-Hayes Company and Hayes Wheels International, which manufacture automobile brakes and wheels. During the plaintiffs' or plaintiffs' spouses' employment, the United Automobile Workers (UAW) and five of its local unions represented them in collective bargaining with their employer. The five bargaining units originally served employees at seven different Kelsey-Hayes plants. Since the 1960s, as required by collective bargaining agreements (CBAs) in effect at each plant, Kelsey-Hayes has provided health insurance benefits to employees, to retirees, and to the surviving spouses of deceased retirees.

In 1987, Kelsey-Hayes sold three of its plants. At that time, the employees in those plants terminated their employment with Kelsey-Hayes. Kelsey-Hayes, however, con-

tinues to provide health insurance benefits to employees who retired from those plants before the sales, and to their spouses, and to the surviving spouses of deceased retirees.

In December of 1992, Kelsey-Hayes split into two companies: Kelsey-Hayes Co., which continued the brake business, and Hayes Wheels International, which continued the wheel business.[1] When the company split, the new Kelsey-Hayes (see footnote 1) took three plants, and Hayes Wheels took one plant. Kelsey-Hayes continues the sponsorship of health insurance benefit plans for pre-split retirees, including those who are retired from the three plants sold in 1987, while each company sponsors the plans for its own post-split retirees.

On April 26, 1993, each company announced that it would modify the health insurance benefits provided to retirees and surviving spouses, effective January 1, 1994. The companies described the changes in a summary plan description[2] (SPD) sent to all retirees in November of 1993. The modifications included the imposition of a monthly premium contribution, increased co-payment and annual deductible requirements, a lifetime benefit cap of $500,000 per beneficiary, and the elimination of the Special Age 65 Benefit.[3] Generally, the companies were to deduct the costs of these modifications from the pensioners' monthly checks. These changes affected at least some retirees from five different plants, and their spouses. The

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[1] Actually, the corporation called Kelsey-Hayes Co. continued in existence, but changed its name to Hayes Wheels. Also, a new corporation was formed which adopted the name Kelsey-Hayes Co.

[2] A summary plan description is a publication explaining the benefits of a particular welfare benefit plan. ERISA requires employers to distribute SPDs to their employees. 29 U.S.C. § 1022 (1988).

[3] This was a monthly payment to pensioners 65 and older intended to reimburse the cost of their Medicare Part B premium.

modifications went into effect as planned on January 1, 1994.

Meanwhile, the plaintiffs filed this action as a class action on November 12, 1993.[4] The plaintiffs raise one claim, for breach of collective bargaining agreements, that is relevant to the issues presented here. They seek declaratory, injunctive, and monetary relief, and costs and attorney fees. In their complaint, the plaintiffs included a demand for a jury trial.

On December 23, 1993, the plaintiffs filed a motion for a preliminary injunction. The district court scheduled a hearing on the motion for March 10, 1994. Prior to the hearing, one of the UAW locals negotiated new CBAs for two of the plants at issue, one owned by Kelsey-Hayes, the other by Hayes Wheels. During these negotiations, both Kelsey-Hayes and Hayes Wheels entered into separate letter agreements with the local union rescinding virtually all the changes to the retiree health plans for those two plants, retroactive to January 1, 1994, and subject to the outcome of this litigation. As a result, the plaintiffs withdrew their request for a preliminary injunction as to retirees from these two plants.

On March 14, 1994, the district court entered a preliminary injunction directing Kelsey-Hayes to reinstate health insurance benefits to pre-1994 levels for retirees of the three remaining plants affected by the injunction.[5] The injunction took effect on April 18, 1994, when the plaintiffs posted an injunction bond. On April 29, 1994, Kelsey-Hayes filed a notice of its intent to appeal the preliminary injunction.

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[4] The district court certified the class on April 25, 1995. The class consists of approximately 2960 pensioners and spouses, about 1180 of whom are affected by the preliminary injunction.

[5] The parties refer to these three plants as the Hientz, Gunite, and SPECO facilities. These are the same three plants that Kelsey-Hayes sold in 1987.

On December 20, 1994, the plaintiffs filed an amended complaint in which they added Hayes Wheels as a defendant. The amended complaint, like the original complaint, included a demand for a jury trial. On February 28, 1995, the district court struck the plaintiffs' jury demand on the recommendation of a magistrate judge, after briefs and argument.

On May 4, 1995, the plaintiffs filed in this court a petition seeking a writ of mandamus directing the district court to reinstate their jury demand.

II. THE PRELIMINARY INJUNCTION

The plaintiffs brought this action for reinstatement of retiree health insurance benefits under section 301(a) of the Labor-Management Relations Act (LMRA), 29 U.S.C. § 185 (1988).[6] The district court granted the plaintiffs' motion for a preliminary injunction ordering the defendant to resume providing complete health insurance benefits to the plaintiffs at no cost to them. *Golden v. Kelsey-Hayes Co.*, 845 F. Supp. 410, 417 (E.D. Mich. 1994). The defendant, Kelsey-Hayes Co., filed this interlocutory appeal, presenting the following issues: (1) Did CBAs between the plaintiffs' union and the defendant provide the plaintiffs a vested right to receive lifetime health insurance benefits without cost; and (2) did the district court abuse its discretion in granting class-wide relief before certifying the class? For the rea-

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[6] Section 301(a) reads as follows:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a).

sons set forth below, we AFFIRM the district court's order granting the preliminary injunction.

ANALYSIS

Did CBAs between the plaintiffs' union and the defendants provide the plaintiffs a vested right to receive lifetime health insurance benefits without cost?

Standard of Review

An appellate court reviews a district court's grant of a preliminary injunction for an abuse of discretion. *CSX Transp. v. Tennessee Bd. of Equalization*, 964 F.2d 548, 554 (6th Cir. 1992). We will hold that the district court erred only if it incorrectly applied the law, or relied on clearly erroneous findings of fact. *Christian Schmidt Brewing Co. v. G. Hieleman Brewing Co.*, 753 F.2d 1354, 1356 (6th Cir.), *cert. dismissed*, 469 U.S. 1200 (1985). We therefore review the district court's conclusions of law *de novo* and its findings of fact for clear error. *Performance Unlimited v. Questar Publishers Inc.*, 52 F.3d 1373, 1381 (6th Cir. 1995). Questions of contract interpretation are generally considered questions of law subject to *de novo* review. *Boyer v. Douglas Components Corp.*, 986 F.2d 999, 1003 (6th Cir. 1993).

Standard for Issuing a Preliminary Injunction

When presented with a motion for a preliminary injunction, a district court considers four factors: (1) the plaintiffs' likelihood of success on the merits, (2) whether the plaintiffs could suffer irreparable harm without the injunction, (3) whether granting the injunction will cause substantial harm to others, and (4) the impact of the injunction on the public interest. *Performance Unlimited*, 52 F.3d 1373 at 1381. None of these factors, standing alone, is a prerequisite to relief; rather, the court should balance them. *Id.* (citing *In re DeLorean Motor Co.*, 755 F.2d 1223, 1228 (6th Cir. 1985)).

The district court did not abuse its discretion in this case.

The district court considered each of the four factors listed above and granted the preliminary injunction. On appeal, the defendant challenges (1) the court's determination that the plaintiffs are likely to succeed on the merits, (2) its determination that the plaintiffs are likely to suffer irreparable harm without the injunction, and (3) its balancing of the harms. We will consider the district court's decisions on these factors in turn.

1. The plaintiffs' likelihood of success on the merits

The plaintiffs are likely to succeed on the merits of this case if they can prove they have a "vested" right to the comprehensive health insurance benefits they received prior to January 1, 1994. To prove this, the plaintiffs must show that the defendant and the union intended to include a right to lifetime benefits when they negotiated the CBAs at issue here. There is no statutory right to lifetime health benefits.[7] If such a right exists, it exists because the parties agreed "to vest a welfare benefit plan." *Boyer*, 986 F.2d 999 at 1005.

The Yard-Man precedent

Relying on our decision in *International Union, United Automobile Workers v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984), the distrcit court found that the "plaintiffs have demonstrated a strong likelihood of success on the merits of their claim" to lifetime health insurance benefits. *Golden*,

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[7] There are two types of employee benefit plans under ERISA: pension plans and welfare benefit plans. 29 U.S.C. § 1002(1), (2)(A) (1988). ERISA subjects pension plans to mandatory participation, vesting, and funding requirements. 29 U.S.C. § 1051 (1988). Welfare benefit plans, however, are not subject to these requirements. Id. Retiree health insurance benefit plans, such as the ones at issue here, are classified as welfare benefit plans under ERISA. 29 U.S.C. § 1002(1). Therefore, no right to lifetime health insurance benefits is created under ERISA, and we do not understand plaintiffs to contend otherwise.

845 F. Supp. at 415. The defendant contends, however, that the Supreme Court has implicitly overruled *Yard-Man*, and that the district court therefore erred in following it. Specifically, the defendant attacks the "*Yard-Man* inference" that retiree benefits are intended to survive the termination of a CBA. The defendant argues that, contrary to *Yard-Man*, the plaintiffs cannot prevail unless they prove the parties explicitly agreed to vest a right to the benefits.

In *Yard-Man*, a case in which retired employees sued their employer alleging it breached their CBA by terminating their life and health insurance benefits at the termination of the CBA, we recognized that parties to CBAs can provide for rights that survive the termination of the agreement. *Yard-Man, Inc.*, 716 F.2d at 1479. We held that whether benefits survive the termination of a CBA depends on the intent of the parties. The opinion states that, in discerning the intent of the parties, basic rules of contract interpretation apply. "For example, the court should first look to the explicit language of the collective bargaining agreement for clear manifestations of intent." *Id.* Further, we instructed that the court "should interpret each provision in question as part of the integrated whole. If possible, each provision should be construed consistently with the entire document and the relative positions and purposes of the parties." *Id.* "The intended meaning of even the most explicit language can, of course, only be understood in light of the context which gave rise to its inclusion." *Id.* When ambiguities exist, we directed district courts to look to other provisions of the agreement for guidance. The aim in such cases is to settle on an interpretation which is harmonious with the entire agreement. *Id.* at 1480.

After setting out the rules of interpretation, we proceeded to apply them to the CBA at issue in *Yard-Man*. In examining the context in which the benefits at issue arose, we wrote: "it is unlikely that [life and health in-

surance benefits], which are typically understood as a form of delayed compensation or reward for past services, would be left to the contingencies of future negotiations." *Id.* at 1482. Moreover, we stated that "retiree benefits are in a sense 'status' benefits which, as such, carry with them an *inference* that the parties likely intended those benefits to continue as long as the beneficiary remains a retiree." *Id.* (emphasis added). We tempered our remarks, however, with the following:

> This is not to say that retiree benefits are necessarily interminable by their nature. Nor does any federal labor policy . . . presumptively favor the finding of interminable rights to retiree insurance benefits when the collective bargaining agreement is silent. Rather, as part of the context from which the collective bargaining agreement arose, the nature of such benefits simply provides another inference of intent. Standing alone, this factor would be insufficient to find an intent to create interminable benefits. In the present case, however, this contextual factor buttresses the already sufficient evidence of such intent in the language of this agreement itself.

Id.

Yard-Man is a prior decision of a panel of this circuit. Thus, we are bound to follow it "unless an inconsistent decision of the United States Supreme Court requires modification of the decision or this Court sitting *en banc* overrules [it]." *Salmi v. Secretary of Health & Human Servs.*, 774 F.2d 685, 689 (6th Cir. 1985). The defendant, aware of this rule, argues that four recent Supreme Court decisions require us to modify *Yard-Man: Curtiss-Wright Corp. v. Schoonejongen*, 115 S. Ct. 1223 (1995); *Litton Financial Printing Division v. NLRB*, 501 U.S. 190 (1991); *Massachusetts v. Morash*, 490 U.S. 107 (1989); and *Laborers Health & Welfare Trust Fund v. Advanced Lightweight Concrete Co.*, 484 U.S. 539 (1988). After examining these cases, we disagree.

In *Schoonejongen*, the plaintiffs sued their employer, alleging that the employer's termination of their health insurance benefits constituted an improper amendment of their welfare benefits plan. *Schoonejongen*, 115 S. Ct. at 1227. In its opinion, the Court decided what kind of amendment procedure ERISA requires the plans to include. The vesting of rights through agreements such as CBAs was not at issue. *See id.* at 1226 ("This case presents the question whether the standard provision in many employer-provided benefit plans stating that 'The Company reserves the right at any time to amend the plan' sets forth an amendment procedure that satisfies [ERISA] § 402(b)(3)."). The Court simply noted that ERISA does not mandate minimum vesting requirements for welfare benefit plans, and that ERISA allows employers to adopt, modify, or terminate such plans at will. *Id.* at 1228. The case bears no relation to the issues in *Yard-Man*.

In *Litton*, the Court determined whether an employer and the union representing its employees must submit their disputes to arbitration under an arbitration clause in an expired CBA. *Litton Fin. Printing Div.*, 501 U.S. at 193. Addressing the question whether the duties and obligations imposed by a contract survive the contract, the Court wrote:

> As with the obligation to make pension contributions . . . , other contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement. *Exceptions are determined by contract interpretation. Rights which accrued or vested under the agreement will, as a general rule, survive termination of the agreement.* And of course, if a collective-bargaining agreement provides in explicit terms that certain benefits continue after the agreement's expiration, disputes as to such continuing benefits may be found to arise under the agreement,

> and so become subject to the contract's arbitration provisions.

Id. at 207-08 (all emphases added).

In its brief, the defendant focuses on the portion of the above quotation which we have underscored and argues that *Litton* requires the plaintiffs to prove an "express agreement" that benefits vest before they can prevail. In making this argument, the defendant ignores the portion of the above quotation which we have italicized in which the Court recognizes that courts, through rules of contract interpretation, can find that rights accrue or vest under the agreement even if they are not explicitly set out in the agreement. *See Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 606-08 (7th Cir.) (en banc) (citing *Litton* in support of the rule that when CBAs are vague regarding the vesting of certain benefits, courts may resort to rules of interpretation, and to extrinsic evidence, in determining if the parties intended the rights to vest), *cert. denied*, 114 S. Ct. 291 (1993). Far from contradicting *Yard-Man*, *Litton* actually supports its reasoning.

In *Massachusetts v. Morash*, the Court decided that an employer's payment of vacation benefits does not constitute a welfare benefit plan under ERISA. *Morash*, 490 U.S. at 120-21. In making this determination, the Court noted that ERISA's vesting requirements do not apply to welfare benefit plans. *Id.* at 119. This was the extent of the Court's discussion of vesting.

Advanced Lightweight Concrete Co. concerned the issue of whether a certain ERISA provision empowers trustees of multiemployer pension funds to collect from employers postcontract pension contributions which the LMRA may obligate the employers to make. 484 U.S. at 541. The Court determined that Congress, in enacting the ERISA provision at issue, did not intend to enable the trustees to use the provision to collect the postcontract contributions required by the LMRA, but not ERISA. *Id.* at 548.

Rather, Congress only intended for the trustees to collect contributions which were promised *prior* to the termination of the CBA. *Id.* at 548-49. While the case concerned the postcontract obligations of employers, the vesting of rights under CBAs was not at issue. Neither *Advanced Lightweight Concrete Co.* nor any of the other Supreme Court opinions cited by the defendant calls into doubt the validity of *Yard-Man*, or the *Yard-Man* inference.

Finally, the defendant asserts that this court abandoned *Yard-Man* in *Cincinnati Typographical Union No. 3, Local 14519 v. Gannett Satellite Information Network, Inc.*, 17 F.3d 906 (6th Cir. 1994). The defendant argues that *Gannett* is inconsistent with the *Yard-Man* because, in *Gannett*, we relied on the Supreme Court's opinion in *Litton*. The defendant bases this argument on its theory that the *Litton* decision and *Yard-Man* are inconsistent. As discussed above, this theory is flawed. Moreover, in *Gannett* we cited *Yard-Man* for the proposition that "we might conclude the parties intended a right to vest if we are shown contract language or extrinsic evidence to support that conclusion." *Gannett Satellite Info. Network, Inc.*, 17 F.3d at 910.

After considering the arguments the defendant makes, and the cases it cites, we conclude that *Yard-Man* is still good law, and controls this case. The district court did not err in following it. Regarding the *Yard-Man* inference, however, we should note that shortly after *Yard-Man* this court stated: "there is no legal presumption based on the status of retired employees." *International Union, United Auto. Workers v. Cadillac Malleable Iron Co.*, 728 F.2d 807, 808 (6th Cir. 1984). *Yard-Man* does not shift the burden of proof to the employer, nor does it require specific anti-vesting language before a court can find that the parties did not intend benefits to vest. Rather, the *Yard-Man* inference, and the other teachings of the opinion regarding contract interpretation and the consideration of extrinsic evidence, simply guide courts faced with the task

of discerning the intent of the parties from vague or ambiguous CBAs.

The district court's interpretation of the CBAs at issue

In its reasoned opinion, the district court included a complete discussion of the evidence that led it to conclude that the plaintiffs are likely to succeed on the merits of their claim to lifetime health insurance benefits at no cost. *See Golden*, 845 F.Supp. at 413-15. We will only summarize the court's findings. The district court cites provisions in each of the CBAs at issue which tie retiree and surviving spouse eligibility for health insurance coverage to eligibility for vested pension benfits. Since retirees are eligible to receive pension benefits for life, the court found that the parties intended that the company provide lifetime health benefits as well.

The district court also notes language from summary plan descriptions[8] (SPDs), provided by the company to the employees at all three plants, which indicates that the company guarantees health benefits. A provision of one of the SPDs provides that those employees who retire *without* pension eligibility because they have not been with the company long enough to participate in the pension plan will, nonetheless, have *lifetime* health coverage at no cost. The defendants argue that because the SPDs specifically provide lifetime health insurance benefits for these retirees only, such benefits were not intended for any other retirees.

The plaintiffs argue the contrary. They assert that this specific language was necessary because these retirees do not have lifetime pension benefits to which to tie eligibility for health coverage, as do all the other retirees. The plaintiffs contend that the parties included this specific

[8] Courts generally accord significant weight to representations made in SPDs. *E.g., Flacche v. Sun Life Assur. Co.*, 958 F.2d 730, 736 (6th Cir. 1992).

language to assure that those retirees who are ineligible for pension benefits still receive lifetime health care coverage. We find the plaintiffs' argument more persuasive; it would be anomalous for the defendant to guarantee lifetime health coverage to retirees with only a couple of years of service while neglecting to provide equal benefits to pensioners with dozens of years of service.

Additionally, the district court cites the conduct of the defendant as evidence of intent. In 1987, the defendant sold the three plants whose retirees now benefit from the preliminary injunction. The defendant agreed, however, to continue funding the retiree benefit plans for those employees who retired before the sales. At that time, the defendant provided an irrevocable letter of credit effective through the year 2002 in the amount of twenty million dollars, indicating that the defendant intended to provide health insurance benefits for many years. After considering the law and the facts of this case, we find no error in the district court's conclusion that the plaintiffs have shown a substantial likelihood of success on the merits.

2. Irreparable harm

The defendant asserts that the plaintiff failed to prove that, without an injunction, they could suffer irreparable harm. First, we should note that proving irreparable harm is not an absolute prerequisite to obtaining a preliminary injunction. As we mentioned above, a court *balances* four factors in assessing whether it should issue a preliminary injunction. *See Performance Unlimited*, 52 F.3d at 1381. The degree of proof necessary for each factor depends on the strength of the plaintiffs' case on the other factors. *In re DeLorean Motor Co.*, 755 F.2d at 1229. With that point clarified, we review the district court's findings of fact for clear error. *Performance Unlimited*, 52 F.3d at 1381. "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing [body] on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Concrete Pipe &*

Prods. v. Construction Laborers Pension Trust, 113 S. Ct. 2264, 2279 (1993) (alteration in original) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)).

In support of its finding that the plaintiffs would suffer irreparable harm, the district court cited affidavits from retirees detailing the financial hardship the modifications in their insurance coverage would cause. The court also cited decisions of other courts holding that retirees, primarily because of their fixed incomes, are unable to absorb even relatively small increases in their expenses without extreme hardship. The defendant argues that, since the plaintiffs failed to produce affidavits from retirees of each plant at issue, the court erred in applying the injunction to all three plants' retirees. The district court, however, found a likelihood that similar harm would befall retirees from all three plants. *Golden*, 845 F. Supp. at 415-16. On reviewing the affidavits, we are not "left with the definite and firm conviction" that the district court made a mistake, and thus its finding is not clearly erroneous.

c. *Balance of harms*

The defendant also argues that the balance of harms favors it, not the plaintiffs, and so the district court should not have granted the preliminary injunction. The defendant, however, made no showing that continuing the benefits would cause it severe financial hardship. The district court noted that the defendant had been funding these benefits for the previous six years. *Id.* at 416. We find no error in the district court's determination that the balance of harms favors the plaintiffs.

Did the district court abuse its discretion in granting class-wide relief before certifying the class?

The defendant asserts that the district court erred in granting a "class-wide" preliminary injunction prior to

certifying the class.[9] The defendant did not raise this issue below, and generally we will not hear the issues raised for the first time on appeal. *E.g., Noble v. Chrysler Motors Corp., Jeep Div.*, 32 F.3d 997, 1002 (6th Cir. 1994). We will deviate from this rule only in exceptional circumstances, such as when following the rule would cause a miscarriage of justice, and particularly where the question is entirely legal and has been fully briefed by both parties. *See United States v. Pickett*, 941 F.2d 411, 415 (6th Cir. 1991). We have also made exceptions when the proper answer is beyond doubt, no factual determination is necessary, and injustice might otherwise result. *Taft Broadcasting Co. v. United States*, 929 F.2d 240, 244 (6th Cir. 1991).

This case does not merit the application of any of these exceptions. All we can glean from the parties' briefs is that the answer is most certainly not beyond doubt. Moreover, because the district court certified the class shortly after the parties filed their briefs in this appeal, any attempt to resolve the issue would be largely academic.

CONCLUSION

Because the district court did not abuse its discretion in granting the plaintiffs a preliminary injunction, and because the defendant failed to raise the class certification issue below, we AFFIRM the district court's order granting the preliminary injunction.

III. THE PETITION FOR A WRIT OF MANDAMUS

The plaintiffs, asserting their Seventh Amendment right to a jury trial in actions at law, petition this court for a writ of mandamus directing the district court to vacate its

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[9] The district court granted the plaintiffs' motion for a preliminary injunction on March 14, 1994. The injunction took effect on April 18, 1994. The parties filed their last brief in this appeal on January 30, 1995. The district court certified the class on April 25, 1995. Consequently, the parties' briefs do not address the fact that the class is now certified.

order striking their demand for a jury trial in this case. In their complaint, the plaintiffs present one claim relevant to their petition: an action under section 301 of the LRMA, 29 U.S.C. § 185, for breach of CBAs. According to the complaint, the plaintiffs seek declaratory relief, injunctive relief, and damages.[10]

The plaintiffs contend that their claim for breach of the CBAs is an action at law, and that the damages they seek are legal relief. The sole issue presented by the petition is: Do the plaintiffs assert legal rights, entitling them to a jury trial under the Seventh Amendment, or are their claims only equitable? For the reasons set forth below, we DENY the plaintiffs' request for a writ of mandamus.

ANALYSIS

Standard for granting a writ of mandamus

The All Writs Statute, 28 U.S.C. § 1651 (1980), vests in this court the power to issue a writ of mandamus. *In re Bendectin Prods. Liab. Litig.*, 749 F.2d 300, 303 (6th Cir. 1984); *see also Beacon Theatres v. Westover*, 359 U.S. 500, 511 (1959). Because mandamus is a "drastic remedy 'to be invoked only in extraordinary situations,'" *In re Mechem*, 880 F.2d 872, 874 (6th Cir. 1989) (quoting *Kerr v. United States Dist. Ct.*, 426 U.S. 394, 402 (1976)), a party seeking such a writ usually must satisfy two conditions: (1) that there are no other adequate means for the party to obtain the desired relief, and (2) that the party has a "clear and indisputable" right to issuance of the writ. *Id.* (quoting *Allied Chem. Corp. v. Daiflon Inc.*, 449 U.S. 33, 35 (1980) (per curiam)).

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[10] The plaintiffs' original complaint did not include the word "damages;" rather, it read: "Judgment against Kelsey-Hayes in an amount equal to all costs and expenses sustained by class members . . . ." The plaintiffs, apparently realizing that it would be of importance in getting a jury trial, amended their prayer for relief, over a year after the case was filed, to include the term "damages."

Where the constitutional right to a jury trial is involved, however, some courts, relying principally on *Beacon Theatres*, have held that neither of these two preconditions needs to be met. *E.g.*, *In re Rhone-Poulenc Rorer Inc.*, 51 F.3d 1293, 1303 (7th Cir.) ("When the writ is used for [preservation of the right to trial by jury], strict compliance with the stringent conditions on the availability of the writ (including the requirement of proving irreparable harm) is excused."), *cert. denied*, 116 S. Ct. 184 (1995); *Wilmington Trust v. United States Dist. Ct.*, 934 F.2d 1026, 1029 (9th Cir. 1991) ("The right to a jury trial, however, has occupied an exceptional place in the history of the law of federal mandamus permitting a writ to issue although the petitioner is unable to show a 'clear and indisputable' right."), *cert. denied*, 503 U.S. 966 (1992).

The right to trial by jury

In *Dimick v. Schiedt*, 293 U.S. 474 (1935), the Supreme Court said that "[m]aintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care." *Id.* at 486. The Seventh Amendment provides that "[i]n suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." As explained by Justice Story,

> [b]y *common law*, [the framers of the Amendment] meant . . . not merely suits, which the *common* law recognized among its old and settled proceedings, but suits in which *legal* rights were to be ascertained and determined, in contradistinction to those where equitable rights alone were recognized, and equitable remedies were administered.

Curtis v. Loether, 415 U.S. 189, 193 (1974) (quoting *Parsons v. Bedford*, 28 U.S. (1 Pet.) 433, 446-47 (1830) (alteration in original)).

Thus, to determine whether the Seventh Amendment entitles a particular litigant to a jury trial in a particular case, we must determine whether that case will resolve legal rights, or only equitable rights. In making this determination, we engage in two different inquiries. First, we compare the case at issue to "18th-century actions brought in the courts of England prior to the merger of the courts of law and equity." *Chauffeurs, Teamsters & Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 565 (1990) (quoting *Tull v. United States*, 481 U.S. 412, 417 (1987)). If the case at issue was unknown in eighteenth century England, we must look to an analogous claim that existed then to guide us in deciding whether the present case is legal or equitable. *Id.* at 565-66. "Second, we examine the remedy sought and determine whether it is legal or equitable in nature." *Id.* at 565 (quoting *Tull*, 481 U.S. at 417-18). The second inquiry is more important. *Id.* (citing *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 42 (1989)). In fact, Justice Brennan persuasively advocated, to simplify and to add some order to the inquiry, exicising the search for an historic analogue from the analysis, and instead focusing solely on the remedy sought. *Id.* at 574-81 (Brennan, J., concurring).

The plaintiffs' claims are equitable

The district court, accepting a magistrate judge's report and recommendation, granted the defendant's motion to strike the jury demand. In the report and recommendation, the magistrate judge concluded that the plaintiffs essentially seek specific performance, an equitable remedy.[11]

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[11] The district court also concluded, erroneously, that the plaintiffs' case is controlled by ERISA § 502(a)(1)(B) under which we have held that there is no right to a jury trial. *E.g., Bair v. General Motors Corp.*, 895 F.2d 1094, 1096 (6th Cir. 1990). In their briefs to this court, the parties devote considerable space to arguing the question of whether ERISA preempts the LMRA and the common law of contracts, and, if so, whether a jury trial is allowed under ERISA. We do not address this argument any further be-

The first inquiry: Is the plaintiffs' LMRA action for breach of CBAs historically legal, or historically equitable?

The Supreme Court has stated that section 301 actions are "comparable to a breach of contract claim—a legal issue." *Terry*, 494 U.S. at 570 & n.7. The right to a jury trial in section 301 actions is, therefore, generally preserved. *Cf. International Union, United Auto Workers v. Hoosier Cardinal Corp.*, 383 U.S. 696, 705 n.7 (1966) (stating, in determining what statute of limitations to apply to a section 301 suit, that the suit "closely resembles an action for breach of contract cognizable at common law").

Thus, as for the first inquiry, we conclude that the plaintiffs' LMRA claim is analogous to a breach of contract action. This determination is not dispositive, however; now we turn to the second inquiry.

The second inquiry: Is the relief the plaintiffs seek legal or equitable?

The plaintiffs seek the following relief on their LMRA claim:

> A. A declaratory judgment that Kelsey-Hayes and Hayes Wheels are contractually obligated to provide class members and eligible dependents with the described health care benefits negotiated by Kelsey-Hayes and the UAW.
>
> B. Preliminary and permanent injunctive relief requiring Kelsey-Hayes and Hayes Wheels to reinstate the health care benefits negotiated by Kelsey-Hayes and the UAW for class members and eligible dependents.

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cause we have stated quite clearly in prior decisions that plaintiffs may, under some circumstances, bring claims for retirement benefits under either ERISA or the LMRA, or under both statutes simultaneously. *E.g., Biros v. Spalding-Evenflow Co.*, 934 F.2d 740, 742 (6th Cir. 1991). In any event, we determine that the plaintiffs' claim is properly brought under the LMRA.

> C. Judgment against Kelsey-Hayes and Hayes Wheels in an amount of damages equal to all costs and expenses sustained by class members and eligible dependents as a result of their refusal to provide the health care benefits negotiated by Kelsey-Hayes and the UAW, including but not limited to:
>
> > (1) All premiums and co-pays paid by class members for health care benefits which were formerly paid by Kelsey-Hayes.
> >
> > (2) All direct payments and bills for health care which formerly were covered by the company paid health care plan.
> >
> > (3) An amount equal to the Special Age 65 Benefit not paid to eligible class members.

The plaintiffs contend that the "damages" they seek (see paragraph C, above) are a legal remedy, not an equitable remedy, and that they therefore assert legal rights entitling them to a jury trial. "[T]he constitutional right to trial by jury cannot be made to depend upon the choice of words used in the pleadings," however. *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 477-78 (1962). The district court determined that, semantics notwithstanding, the plaintiffs actually seek the equitable remedy of specific performance, and that the monetary relief is simply "incidental to, or intertwined with, the equitable remedies sought." In their petition for mandamus, the plaintiffs argue that the district court ran afoul of Supreme Court precedent when it categorized their alleged legal relief as incidental to their equitable relief.

We can resolve this issue by clearing up the plaintiffs' apparent confusion regarding the Supreme Court's use of the phrase "incidental to" in two distinct yet related contexts.

The Court has long indicated that a district court cannot properly deny a litigant a trial on legal issues

by characterizing those issues as merely "incidental to," or insignificant in comparison to, equitable issues. *Curtis,* 415 U.S. at 196 n.11; *Dairy Queen, Inc.,* 369 U.S. at 473; *see Beacon Theatres,* 359 U.S. at 510-11. Once a court determines that a case involves legal issues, the litigants have a right to a jury trial on those issues, regardless of how insignificant they may appear in relation to equitable issues. *See Thermo-Stitch Inc. v. Chemi-Cord Processing Corp.,* 294 F.2d 486, 491 (5th Cir. 1961), *cited with approval in Dairy Queen, Inc.,* 369 U.S. at 473 n.8. A district court violates this precedent when it determines that there are legal issues in the case and denies a jury trial nonetheless.

In this case, the district court was trying, as this court is trying, to determine whether the plaintiffs assert any legal rights. As discussed above, to make that determination we look to the nature of the action and to the relief sought, the latter, as we have seen, being more important. *Terry,* 494 U.S. at 565 (citing *Nordberg,* 492 U.S. at 42).

It is accepted throughout this country that a monetary award, generally, is a form of legal relief. *See generally Restatement (Second) of Contracts* §§ 346-56 (1981) (hereinafter *Restatement*). It is not true however, that "any award of monetary relief must *necessarily* be 'legal' relief." *Terry,* 494 U.S. at 570 (quoting *Curtis,* 415 U.S. at 196). It is well-settled that equitable relief includes monetary damages where required to afford complete relief. *Restatement* § 358(3); *see also Massachusetts Mut. Life Ins. Co. v. Russell,* 473 U.S. 134, 154 n.10 (1985) (Brennan, J., concurring) ("Trust-law remedies are equitable in nature, and include provision of monetary damages.); *Mertens v. Hewitt Assocs.,* 113 S. Ct. 2063, 2068 (1993) (recognizing that while money damages are the classic form of legal relief, courts may also grant money damages as required in indisputably equitable breach of trust cases); *Tull v. United States,* 481

U.S. 412, 424 (1987) ("[W]hile a court in equity may award monetary restitution as an adjunct to injunctive relief, it may not enforce civil penalties."); *Frank v. Coyle*, 16 N.W.2d 649, 650 (Mich. 1944) ("[T]he court of equity, having jurisdiction upon any well-settled ground of equity, will retain jurisdiction to grant complete relief.").

In their complaint, the plaintiffs seek "injunctive relief requiring Kelsey-Hayes and Hayes Wheels to reinstate the health care benefits" to which they claim they are entitled.[12] In *Terry*, the Court stated that "a *monetary* award '*incidental to* or intertwined with injunctive relief' may be *equitable*." *Terry*, 494 U.S. at 571 (emphasis added) (quoting *Tull*, 481 U.S. at 424). According to section 358(3) of the *Restatement*, "[i]n addition to specific performance or an injunction" an equity court may award "damages and other relief" as may be necessary to afford complete relief. As an illustration, the drafters of the *Restatement* wrote: "Since an order seldom results in performance within the time the contract requires, damages for the delay will usually be appropriate." *Restatement, supra*, § 358, illus. c.

The district court granted the plaintiffs a preliminary injunction on March 17, 1994. The injunction forced Kelsey-Hayes to continue performing the alleged contract as it had prior to January 1, 1994. The monetary award the plaintiffs seek is to compensate them for the amount of loss they incurred between January 1 and March 17. Most of this loss is probably in the form of premiums and Special Age 65 Benefits withheld from pension checks by Kelsey-Hayes during this period. The balance would be the out-of-pocket expenses incurred in increased deductibles and co-payments. Such damages are exactly the type of monetary relief that courts, and the *Restatement*, envision as equitable relief; they are incidental to the grant

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[12] As the magistrate judge concluded, this is actually a request for specific perforance of a contract.

of equitable relief, yet are necessary to afford complete relief. A court does not err in denying a jury trial where the monetary award sought is incidental to, or intertwined with, equitable relief. It does err when it denies a jury trial because of its determination that *legal issues* in the case are merely incidental to equitable ones.

As for the second inquiry (as distinguished from the inquiry regarding the law of the eighteenth century), since the monetary award sought by the plaintiffs is "incidental to and intertwined with" their request for specific performance, we are convinced that the relief they seek is equitable. Because according to Supreme Court precedent the second inquiry is more important than the first in determining whether the plaintiffs assert legal rights, we conclude that the plaintiffs do not assert legal rights in this case.

That the plaintiffs seek a declaration of rights under the Declaratory Judgment Act, 28 U.S.C. § 2201, does not alter our conclusion. "Declaratory relief may be legal or equitable depending on the basic nature of the underlying issues." *United States v. New Mexico,* 642 F.2d 397, 400 (10th Cir. 1981). In actions seeking declaratory relief, the right to a jury trial is preserved only where it otherwise exists. *See Robinson v. Brown,* 320 F.2d 503, 505 (6th Cir. 1963) ("The inclusion of a claim for declaration of rights in the complaint did not, in our opinion, convert an equity case into an action at law."), *cert. denied,* 376 U.S. 908 (1964); *see also Beacon Theatres,* 359 U.S. at 504 (stating that a defendant entitled to a jury trial in an antitrust suit "cannot be deprived of that right merely because [the plaintiff] took advantage of the availability of declaratory relief to sue . . . first"). Seeking declaratory relief does not entitle one to a jury trial where the right to a jury trial does not otherwise exist.

As we understand Judge Boggs's dissent he, argues that our inquiry should end upon the determination that section

301 actions are analogous to actions for breach of contract. The essence of his argument is: (1 Breach of CBA claims are analogous to actions for breach of contract, (2) breach of contract actions were historically brought in courts of law, (3) the plaintiffs can be made whole through legal relief alone, hence their request for equitable relief is superfluous, and (4) we should therefore conclude that this case is simply a breach of contract action in which the plaintiffs seek legal relief.

Judge Boggs indicates that our discussion of equity courts' jurisdiction to award money damages is irrelevant because, he argues, these plaintiffs can be made whole by legal relief alone. Therefore, prior to the merger of law and equity, there would not have been jurisdiction for a court of equity to hear this case. Judge Boggs concedes, however, that "[i]f an LMRA § 301 action for breach of a CBA was arguably analogous to a suit at equity, then a discussion of the amount of money damages that an equity court could award would be on point." *Dissent* at p.4 ¶ 7.

It is certainly true, as Judge Boggs contends citing *Schoenthal v. Irving Trust Co.*, 287 U.S. 92, 94 (1933), that federal courts cannot grant equitable relief without first determining that the plaintiff has no adequate remedy at law. Despite Judge Boggs's assertion to the contrary, however, this case, as it is presented to us today, could only have been maintained in a court of equity (prior to the merger of law and equity). Only a court of equity could have issued the preliminary injunction which the district court issued. Moreover, only a court of equity could issue the permanent injunction the plaintiffs seek.

It is also true, as Judge Boggs points out, that "[t]he form of the plaintiffs' complaint does not control the characterization of the action as either equitable or legal." *Bugher v. Feightner*, 722 F.2d 1356, 1359 (7th Cir. 1983). We do not base our characterization on this case as equitable on the form of the complaint alone, however. Implicit in the issuance of a preliminary injunction, as was

done here by the district court, indeed, in the granting of any form of equitable relief, is a conclusion that the plaintiff has no adequate remedy at law. *See Schoenthal*, 287 U.S. at 95. Thus, since the defendant does not challenge in this appeal the district court's implicit conclusion that the plaintiffs have no adequate remedy at law, we assume that the district court's conclusion was correct. *Cf. Griffin v. Michigan Dep't of Corrections*, 5 F.3d 186, 190 (6th Cir. 1993) (Boggs, J.; Norris, J., concurring) ("The law of the case doctrine applies to issues implicitly decided in earlier stages of the same case."). Judge Boggs's contention that the plaintiffs can be made whole through legal relief alone is therefore anomalous, and making that contention undermines the very validity of the preliminary injunction granted in this case.

It is clear then that this particular case claiming a breach of a CBA is an equitable one, because, unlike in many contract actions, the plaintiffs seek equitable relief to which the monetary relief is only incidental. *See* Redish, *Seventh Amendment Right to a Jury Trial: A Study in the Irrationality of Rational Decision Making*, 70 Nw. U.L., Rev. 486, 490 (1975) ("In the majority of cases at common law, the equitable or legal nature of a suit was determined not by the substantive nature of the cause of action but by the remedy sought."). In fact, had the district court granted the preliminary injunction sought by the plaintiffs *prior* to January 1, 1994 (as it could have, because the plaintiffs filed their motion for a preliminary injunction on December 23, 1993), this suit would not involve money damages at all. Rather, the plaintiffs would have sought only a declaration and a permanent injunction, and we would not be engaged in this debate.

CONCLUSION

Because we conclude that the plaintiffs' claims are entirely equitable, we DENY their petition for a writ of mandamus. As discussed above, we AFFIRM the district court's order granting the preliminary injunction.

BOGGS, Circuit Judge, concurring in part and dissenting in part. Because I believe the Seventh Amendment guarantees the right to jury trial in all LMRA § 301 actions for breach of a collective bargaining agreement in which the plaintiffs seek money damages, I dissent from the part of the opinion denying the petition for a writ of mandamus. In *Terry*, the Supreme Court held that the plaintiffs in an indirect action for breach of a CBA under LMRA § 301 (breach of the CBA plus breach of the union's duty of fair representation) have a Seventh Amendment right to jury trial. *Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*, 494 U..S. 558, 110 S. Ct. 1339, 108 L.Ed.2d 519 (1990). Certainly plaintiffs in a direct action for breach of a CBA under § 301 have an even stronger Seventh Amendment claim. The court's reason for denying a jury trial—that the plaintiffs seek legal *and* equitable remedies—has been rejected by the Supreme Court since *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 82 S. Ct. 894, 8 L.Ed.2d 44 (1962). *See generally Whitlock v. Hause*, 694 F.2d 861, 864 (1st Cir. 1982) ("The central concern in *Dairy Queen* was to prevent the merger of law and equity from eroding the seventh amendment guaranty.").

If the plaintiffs in this case were seeking only damages, they would have a right to jury trial on the issue of breach of the CBA. If the plaintiffs were seeking damages and a declaration that the CBA means what they say it does, they would still have a right to jury trial on the issue of breach of the CBA. *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 504, 79 S. Ct. 948, 953 (1959) (jury trial right not lost when a request for declaratory judgment is added to an action for damages). The court's opinion concedes as much, holding that the right to a jury trial under § 301 is "generally preserved." However, it then takes away the plaintiffs' Seventh Amendment right because they also request an injunction.

The Supreme Court has held repeatedly that a request for an equitable remedy does not waive the right to trial by jury on legal issues. *Dairy Queen, supra*, 369 U.S. at 473 (if there is a legal issue, the court should grant a jury trial on that issue regardless of any other, equitable parts of the action).

> [I]f a 'legal claim is joined with an equitable claim, the right to jury trial on the legal claim, including all issues common to both claims, remains intact. The right cannot be abridged by characterizing the legal claim as "incidental" to the equitable relief sought.' "

Tull v. United States, 481 U.S. 412, 425, 107 S. Ct. 1831, 1839, 95 L.Ed.2d 365 (1987) (quoting *Curtis v. Loether*, 415 U.S. 189, 196 n.11, 94 S.Ct. 1005, 1009 n.11, 39 L.Ed.2d 260 (1974)). Consider the Supreme Court's instructions in *Curtis*: "The Seventh Amendment does apply to actions enforcing statutory rights, and requires a jury trial upon demand, if the statute creates legal rights and remedies enforceable in an action for damages in the ordinary courts of law." *Curtis, supra*, 415 U.S. at 194. Clearly, LMRA § 301 creates legal rights enforceable in an action for damages under ordinary common law principles. The plaintiffs here seek to enforce such a right and win damages. In my opinion, our constitutional inquiry ends there. *Accord Gnossos Music v. Mitkin, Inc.*, 653 F.2d 117 (4th Cir. 1981) (holding that plaintiffs in a copyright action seeking an injunction and the statutory minimum damages of $250 have a right to jury trial on the issue of liability and damages because they seek damages for violation of a traditionally legal right).

Instead, the court holds that an otherwise legal issue ceases to be legal because the plaintiffs add a request for an injunction. (Behind this holding is an idea that the injunction is more important to *these* plaintiffs than legal relief, a misunderstanding discussed below.) But the court

does not explain why this additional remedy is a relevant consideration. The inclusion of a request for an injunction has nothing to do with the issue of breach. The relevant facts do not change, nor does the legal remedy to which the plaintiffs are entitled if the trier of fact decides in their favor. *See Woodell v. International Bhd. of Elec. Workers, Local 71*, 502 U.S. 93, 97, 112 S. Ct. 494, 498, 116 L.Ed.2d 419 (1991) (applying *Terry* rule that Section 301 actions are legal in nature to situations where the plaintiff seeks both money damages and an injunction). The only difference is that, after liability is determined, the judge can award permanent injunctive relief. This possibility is no more relevant to the legal issue of breach than is, for example, a post-verdict request for costs.[1]

The court discusses, *Opinion* at pp. 22-24, the power of a court of equity to award monetary relief incidental to its equitable powers. I do not see the relevance of that discussion. If an LMRA § 301 action for breach of a CBA was arguably analogous to a suit at equity, then a discussion of the amount of money damages that an equity court could award would be on point. *Cf. Mitchell v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 291-92, 80

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[1] This is not a case where the court examines the remedy authorized by statute to determine the nature of a cause of action. *Cf. Terry, supra* (remedies authorized by the statute aid determination of the proper historical analog for fair representation suit against union and employer); *Tuss, supra*, 1837-38 (statutory remedy dependent on "calculations traditionally performed by judges" is circumstantial evidence that Clean Water Act suit is analogous to a suit at equity); *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 42, 109 S. Ct. 2782, 2790, 106 L.Ed.2d 26 (1989) (since statute authorizes damages similar to traditional tort damages, the action is legal). LMRA § 301 itself does not explicitly provide an injunctive remedy for breach of a CBA. *See, e.g., International Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Mack Trucks, Inc.*, 820 F.2d 91, 98 (3d Cir. 1987) (federal common law principles allow a court to issue some types of injunctions in suits under § 301, if such an injunction is not prohibited by the Norris-LaGuardia Act).

S. Ct. 332, 334-35, 4 L.Ed.2d 323 (1960) (Congress expressly gave courts "equitable" powers under the Fair Labor Standards Act, and these powers include the authority to award restitutionary back pay) (cited in *Terry, supra,* 494 U.S. at 572). In that situation, a party would have no jury trial right unless the authorized damages action exceeded an equity court's traditional jurisdiction. An LMRA § 301 action, on the other hand, is analogous to an action for breach of contract, as the court concedes.[2] There is no source here for "equitable powers" to which an award of money can be incidental.

In fact, before the merger of law and equity, an equity court would have had no jurisdiction to hear the present action at all. Nothing in the record indicates that the legal relief the plaintiffs seek is inadequate to make them whole. Because of *res judicata,* any award of damages, even if for a single day, determines the meaning of the contested benefits provision forever. If more specificity is required, a declaration (which does not change the legal nature of an otherwise legal action) can be tailored to meet the plaintiffs' needs. All that an injunction adds is the threat of contempt as a sanction for non-compliance, and I see no indication that the ability to bring contempt proceedings is particularly important to those plaintiffs. If legal remedies were adequate, an equity court would not have jurisdiction to decide the issue of breach.[3] *Schoenthal v. Irving Trust Co.,* 287 U.S. 92, 94, 53 S. Ct. 50, 51, 77 L.Ed. 185 (1933).

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[2] Since the entire purpose of the two-part test, including the inquiry into remedies, is to determine what actions are analogous to suits at common law, *Tull, supra,* 481 U.S. 417, it makes no sense to use the test to deny a jury trial right when it is undisputed that there is a direct analogy to a traditionally legal action. Regardless of whether the first or second part of the *Tull* test is more important, no court has ever used an inquiry into remedies to make a patently legal issue equitable.

[3] Given that the pleaded legal remedies are adequate to resolve permanently the long-term questions in dispute, my colleagues

The Supreme Court used the adequacy of the remedy traditionally available at law to decide that monetary relief was legal rather than equitable in *Granfinanciera*. In that case, the defendant argued that monetary relief was equitable in nature because it was of the type that an equity court could have awarded incidental to an injunction. The Court responded that, although an equity court had powers to award money damages incidental to an equitable remedy, historical limits on an equity court's jurisdiction would have barred it from hearing a similar claim for damages because that claim could also have been brought adequately at law. *Granfinanciera, supra,* 492 U.S. at 47-48. Therefore, the Court determined that the issue in dispute was legal in nature. It cited with approval an earlier case that held that "the long-settled rule that suits in equity will not be sustained where a complete remedy exists at law . . . , 'serves to guard the right of trial by jury preserved by the Seventh Amendment and to that end it should be liberally construed.'" *Granfinanciera, supra,* 492 U.S. at 48 (citing *Schoenthal, supra,* 287 U.S. at 94). Obviously, Golden's situation is precisely on point. Without a showing that law could not have awarded him the relief he seeks (in the form of damages and a declaration), an equity court would

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state, *Opinion* at p.26, that an equity court nevertheless would have had jurisdiction over the entire action because the plaintiffs have obtained a preliminary injunction. I cannot agree. A preliminary injunction is equitable, but it is also *preliminary*: it occurs before trial and before evidence, and has no binding effect on the eventual resolution of the case. *Brown v. International Bhd. of Elec. Workers,* 936 F.2d 251, 255 (6th Cir. 1991). How can pre-trial *motions* determine the nature of an underlying claim? I must stress again that the Supreme Court's Seventh Amendment jurisprudence means that a court can exercise jurisdiction that would traditionally have been both legal and equitable without abrogation of the Seventh Amendment right to jury trial on legal issues. The district court's jurisdiction to issue a preliminary injunction is certainly equitable—but the nature of *that* jurisdiction is irrelevant to the question whether the plaintiff has a Seventh Amendment right to trial by jury on another issue.

have had no power to which legal relief could be considered "incidental."

Up until now, the legal nature of an issue depended on the generic type of issue. The court rejects this position, and makes the legal nature of an issue in the Sixth Circuit depend on the quirkly circumstances that determine which of many possible remedies a plaintiff prefers. In this case, future compliance is worth much more to the plaintiffs than retrospective damages, because the preliminary injunction has been shielding them from harm. If the opposite were true—that is, if there had been no preliminary injunction, and benefits had been withheld during the pendency of this action—then damages would be considerable and the court would have to find a right to trial by jury. The idiosyncratic importance of the types of relief sought by the particular plaintiffs should have no place in Seventh Amendment analysis.

The court's new rule will force plaintiffs bringing an action for breach of a collective bargaining agreement to choose between a request for a jury trial and a request for equitable relief. For many plaintiffs, the equitable relief will not be important enough to risk the venerable and crucial right to trial by jury. Others will wait to seek an injunction by an amendment to the pleadings after the jury is empaneled (if possible), or by bringing a new action utilizing the collateral estoppel effect of the jury's liability determining (if not barred by res judicata themselves). The plaintiffs in this action are no exception: given the court's holding in this case, plaintiffs' counsel may simply amend the complaint to remove the request for injunctive relief. If, for some reason, an injunction becomes necessary down the road, the plaintiff could then attempt to raise the issue by amendment or in a new action.

Obviously, all this maneuvering should be unnecessary. If the right to a jury trial on a legal issue can survive the request for an injunction, plaintiffs will tell the court

everything they want at the beginning of the litigation. Parties will not be forced, under threat of losing a constitutional right, to amend at the eleventh hour or file additional actions on the same set of facts. Nor will the law on amending complaints and the law of *res judicata* be asked to adapt to the new situation (*e.g.*, is there an exception to *res judicata*, allowing a second proceeding on the same cause of action, because the plaintiff now seeks an injunction that it could have sought in the first action, but didn't because it wanted a jury trial?). Clearly, a simpler, transparent pleading regime better fits modern federal procedure. *See generally* Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure: Civil 2d § 1043, 138 ("the abolition of the forms of action furnish a single uniform procedure by which a litigant may present his claim in an orderly manner to a court empowered to give him whatever relief is appropriate and just").

The consequences of the court's rule become even more problematic when applied to situations when a *defendant* seeks to exercise the right to a jury trial. Consider this hypothetical: the defendant wants a jury trial in a breach of contract action, and would clearly be entitled to one if the plaintiff sought damages and/or a declaration. Aware of this, the cunning plaintiff adds a request for an injunction (which he doesn't really care about). Since the contract will last for a long time after the trial, an injunction would resolve the heart of the dispute. Under the court's rule, the defendant suddenly has no jury trial right, because the legal remedies have become "incidental." As long as the plaintiff pleads artfully, this rule destroys a defendant's constitutional right to trial by jury in all contract actions where the contract continues into the future.

Where there is a legal issue, there is a right to jury trial. A legal issue does not stop being a legal issue merely because an additional remedy is sought. What-

ever the word "incidental" means, legal remedies are not be merely "incidental" to an injunction when the legal relief (1) relates to an issue, such as breach of a contract, that is clearly legal as a matter of history and tradition; and either (a) can resolve the bulk of the dispute between the parties without aid from the supposedly important injunction; or (b) could never have been awarded by an equity court, because that court would have been without jurisdiction to hear the case.

The Seventh Amendment right to a jury trial should not be curtailed based on this court's convoluted logic. The error is grave, and the issue important. I must therefore respectfully dissent.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Action No. 93-CV-74824-DT

Honorable Paul V. Gadola
United States District Judge

JOSEPH GOLDEN, ANGELO DEITOS, EDWARD JONES, IDA THOMASON, LUTHER PALMER, CAROLINE FORYS, JOSEPHINE THOMAS, STEPHEN SANTANGELO, ARTHUR SALLIS, THELMA SONGER, JOHN W. GALLOWAY and ROGER FARRAR,

Plaintiffs,

VS.

KELSEY-HAYES COMPANY, a Delaware corporation, HAYES WHEELS INTERNATIONAL, INC., a Delaware corporation, VARITY CORPORATION, a Delaware corporation, and TOWERS PERRIN FORSTER & CROSBY, a Pennsylvania corporation,

Defendants.

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

RECOMMENDATION: Defendant's Motion to Strike Jury Demand and Prayer for Mental Distress Damages should be granted.

* * * *

I. FACTS AND PROCEEDINGS

Plaintiffs are former hourly employees of Defendant Kelsey-Hayes who claim health insurance benefits under collective bargaining agreements with the company.

Kelsey-Hayes is a supplier and manufacturer of automotive parts. Defendant Hayes-Wheels owns and operates the former Kelsey-Hayes plant in Romulus, Michigan. Defendant Varity Corporation is a holding company which owns Kelsey-Hayes, and Defendant Towers Perrin is an accounting firm which provided advice to Varity regarding retirement benefit obligations.[1] Unless otherwise specified, "Defendant" herein shall refer to the Kelsey-Hayes Company.

In April 1993 Defendant notified Plaintiffs that it intended to change their health benefits and, effective January 1, 1994, it added monthly premium contributions, deductibles and co-pays, and eliminated a special age 65 (Medicare) benefit. The instant action seeks injunctive relief, declaratory judgment, and damages as a result of those changes. It is based upon an alleged breach of the collective bargaining agreements (§ 301 of the Labor Management Relations Act, LMRA, 29 U.S.C. § 185), violations of the Employee Retirement Income Security Act (§ 502 of ERISA, 29 U.S.C. § 1132), and principles of estoppel. After commencement of the action, the parties reached an agreement for the continuation of benefits for the Michigan plant retirees during the pendency of the litigation, and on March 15, 1994 Judge Gadola granted a preliminary injunction regarding the out-of-state plant retirees. That order is presently on interlocutory appeal before the Sixth Circuit Court of Appeals. Plaintiffs' Motion for Class Certification is the subject of a separate Report and Recommendation by the undersigned.

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[1] The undersigned granted Plaintiffs' Motion for Leave to Amend Complaint, which added Hayes-Wheels as a Defendant, and a tortious interference count against (added) Defendants Varity and Towers Perrin. That order is presently before Judge Gadola on appeal. This Report and Recommendation applies to Plaintiffs' claims against Kelsey-Hayes and Hayes-Wheels, but does not address any right to jury trial on the tortious interference claim against the other two Defendants.

On November 15, 1994 Defendant filed a Motion to Strike Jury Demand and Prayer for Mental Distress Damages. The matter was referred to the undersigned and arguments were heard on December 2, 1994.

II. *MENTAL DISTRESS DAMAGES*

The general rule is that damages for extra-contractual damages (such as mental distress) are not available under ERISA. *Massachusetts Mutual Life Insurance Co. v. Russell,* 473 U.S. 134, 144 (1985). It also appears that one must look to state law to see if mental distress damages are authorized in a § 301 collective bargaining agreement action. *International Union of Automobile Workers v. Park-Ohio Industries,* 687 F.Supp. 338, 342, 343 (S.D. Ohio, 1987); affirmed in part, reversed in part, and remanded without opinion in 876 F.2d 894 (6/15/89). In Michigan the general rule is that damages for mental distress cannot usually be recovered in an action for breach of contract. *Kewin v. Massachusetts Mutual,* 409 Mich. 401, 415 (1980).

Plaintiffs acknowledge that they have only asked for mental distress damages in order to preserve the issue for appeal. Brief in Opposition to Motion to Strike Jury Demand, fn. 1, p. 2. The prayer for such damages should therefore be striken, without prejudice to any appeal therefrom.

III. THE JURY DEMAND

It appears settled that there is no right to jury trial in the Sixth Circuit on claims for benefits under § 502 of ERISA. *Daniel v. Eaton Corporation,* 839 F.2d 263 (6th Cir. 1988); *Bair v. General Motors Corporation,* 895 F.2d 1094 (6th Cir. 1990). Plaintiffs' position, however, is that its § 301 collective bargaining agreement claim is a standard breach of contract action, which is legal, not equitable in nature, and that they are entitled to a jury trial thereon under the Seventh Amendment.

A. *General Principles*

The Supreme Court has recently discussed the relevant factors in deciding when a jury trial is available. In *Teamsters Local 391 v. Terry*, 494 U.S. 558 (1990), employees filed a § 301 suit against their employer over company layoff and recall procedures, and a breach of the duty of fair representation suit against their union for failure to process grievances thereon. The action against the employer was dismissed (due to bankruptcy) before the case reached the high court. The issue before the Court was then whether an employee who seeks relief in the form of back pay (due from his employer) for his union's alleged breach of its duty of fair representation has a right to trial by jury. In holding that he does, the Court observed:

> Since the merger of the systems of law and equity . . . this Court has carefully preserved the right to trial by jury where legal rights are at stake. . . . To determine whether a particular action will resolve legal rights, we examine both the nature of the issues involved and the remedy sought. 'First, we compare the statutory action to 18th century actions brought in the courts of law and equity. Second, we examine the remedy sought and determine whether it is legal or equitable in nature.' [*Tull v. United States*, 481 U.S. 412, 417 (1987)]. The second is the more important in our analysis.
>
> 494 U.S. at p. 565

Justice Brennan, concurring, would have dispensed with the 18th century English analogies altogether and focused solely on the relief sought. At p. 575. The Court also noted that:

> [A] monetary award 'incidental to or intertwined with injunctive relief' may be equitable.
>
> 494 at p. 570

In *Bair v. General Motors Corporation*, 895 F.2d 1094 (6th Cir. 1990), noted above, a salaried employee sued GM under ERISA seeking to be enrolled in an early retirement program. Although this was not a § 301 action, the Court's discussion of the breach of contract theory is enlightening:

> We reject appellant's claim that his action is one entitling him to a jury. Appellant argues that contract actions are historically 'legal' and that he therefore has a right to a jury. . . . Although he frames his action as one at law, it is in fact brought in equity. The legal or equitable nature of an action 'is determined by considering, first, the premerger custom with reference to such questions; second, the remedy sought; and, third, the practical abilities and limitations of juries'. . . . This Court has noted that 'the primary focus in this circuit in analyzing the legal or equitable nature of an issue . . . is on the second consideration. . . .' Most importantly for this appeal, 'if a party seeks solely injunctive relief or back pay, the relief sought is equitable and there is no right to a trial by jury. . . .' Appellant is seeking only instatement in the Program and the payments due him had he initially been granted participation to begin with. Thus, his action is one in equity, not at law. He therefore is not entitled to a jury.
>
> 895 F.2d at p. 1097.

B. *DISCUSSION*

Two recent district court opinions have considered the right to a jury trial, under ERISA (only) but in the context of a breach of contract theory. In *Sprague v. General Motors Corporation*, 804 F.Supp. 931 (E.D. Mich. 1992), retired salaried employees of GM were challenging company reductions in their health care benefits. In holding there was no right to a jury trial, Judge

Feikens first held that the monetary damages requested were (equitable) restitution:

> As noted above, the second prong of the Seventh Amendment inquiry, the type of remedy sought, carries the most weight in a right to jury trial analysis. Even if plaintiffs were successful in the characterization of their claim as one of breach of contract thereby satisfying the first prong, my conclusion that the relief they seek, as discussed below, is equitable still denies them a right to a jury trial.
>
> 804 F.Supp. at p. 934
>
> In the situation at hand, the monetary relief which plaintiffs are requesting is restitutionary. They are asking GM to return to them monies allegedly retained improperly as the result of imposing copayments and deductibles and reducing certain coverage. This is restitution in its most classic sense.
>
> 804 F.Supp. at p. 436
>
> Even if this court were to accept plaintiffs' notion that their federal common law claims maintain jurisdictional grounds independent of ERISA Section 502, the characterization of the relief sought would remain the same; as discussed above, plaintiffs are seeking restitutionary, and not compensatory, relief. Under the second prong of the Seventh Amendment test, discussed *supra*, plaintiffs' requested relief still would not allow them a jury trial.
>
> 804 F.Supp. at p. 939

Plaintiffs suggest that Judge Feikens' analysis is flawed because "damages are measured by plaintiff's loss and restitution is measured by the defendant's gain," and, in the "classic" sense, restitution is coupled with rescission or cancellation of the contract (not sought here). While the undersigned is not fully convinced that Plaintiffs' posi-

tion is correct,[2] their argument may prove too much. That is, if, as they contend, they are suing on the contract, and demanding that the company live up to its bargain, they are really asking for specific performance, a "quintessentially equitable remedy."[3]

> The remedy of specific performance enables a court having equitable powers to compel a party to a contract to perform, if not exactly, at least substantially, what he has undertaken to do.
>
> *Williston on Contracts*, Third Edition, § 1418, Vol. II, p. 644.
>
> From comparatively early times, the English chancellors gave this redress.
>
> *Ibid.*, p. 646, fn. 3.

Thus, if the monetary relief sought is deemed equitable restitution, or the return of the contributions deemed merely specific performance of Defendant's contractual obligations, Plaintiffs would not be entitled to a jury trial.

Even if the monetary damages sought here are deemed legal in nature, however, those damages appear only incidental to the injunctive relief sought. Judge Feikens, in *Sprague*, went on to hold:

> Moreover, 'a monetary award incidental to or intertwined with injunctive relief may be equitable.' *Terry*,

---

[2] That is, it does seem that monies paid by Plaintiffs to Defendant, which are sought returned or reimbursed, would be equitable restitution, although out-of-pocket expenses for treatment or obtaining other insurance, paid to third parties, would be legal, compensatory, damages.

[3] *Meredith v. Allsteel, Inc.*, (N.D. Ill. 1994), unpublished opinion, attached to Defendant's Motion, which held that even though retirees sought pension benefits under § 301 LMRA in addition to ERISA, they were not entitled to a jury trial. See also *Haeffele v. Hercules Inc.*, 703 F.Supp. 326, 331 (D. Del. 1989).

> 494 U.S. at 571, 110 S.Ct. at 1348. The monetary relief requested by plaintiffs pales in comparison to the scope of injunctive relief sought. Plaintiffs are asking for all benefits which they have failed to receive and any other 'damages' as a result of GM's actions. GM's action occurred in 1988; there has been an alleged loss of benefits for four years. Plaintiffs are also asking this court to compel GM to restore its health care program to its pre-1988 status and to prevent any further changes for decades to come. Because the monetary relief would only cover a period of a few years, while the injunctive relief would cover a period of decades, any monetary award would be incidental to the injunctive relief, thereby depriving plaintiffs of a jury trial right.
>
> 804 F.Sup. at p. 939.

The other recent district court decision is *Alexander v. Primerica Holdings, Inc.*, 819 F.Supp. 1296 (D. N.J. 1993), another ERISA case brought by (salaried) retirees for health insurance benefits. There the court held:

> [T]his is not a case in which a contract has been breached and compensatory damages are sought as a substitute for Plaintiffs receiving the benefit of their alleged bargain . . . . Instead, Plaintiffs seek reinstatement of the contract on its original terms . . . . Courts have uniformly held that claims for the instatement or reinstatement of ERISA benefits constitute equitable relief, even when couched in terms of breach of contract.
>
> 819 F.Supp. at pp. 1307-1308.
>
> Plaintiffs are seeking a reinstatement of benefits and monies which they claim were improperly withheld. Although those claims involve a demand for money damages, they do not constitute 'legal' relief.
>
> *Ibid.*, p. 1309.

> Although some Plaintiffs may have suffered out-of-pocket expenses upon choosing to terminate their benefits with Primerica and to seek substitute coverage, it is disingenuous to suggest, as Plaintiffs do, that this case is primarily about those damages.
>
> *Ibid.*, p. 1309.

While none of the above cases except *Meredith* specifically involves a collective bargaining agreement under § 301, the analyses of the "legal contract" vs. "equitable relief" question appears sound. The relief sought by Plaintiffs in the instant case against Kelsey-Hayes and Hayes Wheels under all three counts against them (§ 301-Count I, ERISA-Count II, Estoppel-Count III) is identical:

> First ("A")
>
> > Declaratory Judgment that Defendants are contractually obligated to provide the class members with their negotiated health benefits;
>
> Second ("B")
>
> > Preliminary and Permanent Injunctive Relief requiring Defendants to reinstate and maintain those health benefits;
>
> Third ("C")
>
> > Damages of costs and expenses sustained, including 1) new premiums and co-pays paid, 2) health care bills paid, and 3) the special Age 65 benefit.
>
> Fourth ("D")
>
> > Damages for mental distress and anguish.

The relief sought against Varity and Towers Perrin in Count IV ("torious interference") included the same damages of costs and expenses ("C") and mental distress ("D"); it did not include injunctive relief or declaratory

judgment ("A" or "B"), and added a claim for punitive and exemplary damages.

With respect to the relief sought, we have basically two versions of what the case is about. Plaintiffs are saying that we want monetary reimbursement for our costs and expenses of added premiums, co-pays, age 65 benefits, and any medical bills previously covered—and only incidentally do we want the company to reinstate and maintain its original program. Defendant is saying that Plaintiffs want us to abide by the terms of our original agreement(s), with no changes into the indefinite future until all covered individuals are gone—and only incidentally reimburse any expenses caused by the changes, from the time of those changes to the time of the preliminary injunction.

The undersigned is persuaded that Defendant's position is a more accurate description of the litigation. To hold that this case is more about reimbursement of monetary expenses than about long-term injunctive relief, would have the tail wagging the dog.

In Plaintiffs' Amended Complaint, they first seek declaratory judgment and then preliminary and permanent injunctive relief. They allege that "the class members have no adequate remedy at law." (Para. 42). They seek class certification under, inter alia, Rule 23(b)(2), Fed.R.Civ.P., which makes appropriate "final injunctive relief or corresponding declaratory relief." They are seeking to require the company to abide by the terms of the agreements well into the future—which is seeking specific performance, an equitable remedy. They are seeking a return from the company of monies wrongfully paid to it —arguably equitable restitution. Any monetary expenses would have been incurred only from the date of the unilateral changes, January 1, 1994, to March 15, 1994, when the preliminary injunction issued, a period of 10½ weeks—which "pale in comparison" to the requested injunctive relief, which extends indefinitely into the future.

Furthermore, with the same relief sought, under the same programs and agreements, pursuant to both § 301 and ERISA, it would seem incongruous to hold that a jury trial is available under one, but not the other, statute. It also seems inappropriate to deny a jury trial to a salaried retiree who relies for his claim of benefits upon a common law oral or written contract with the employer, but grant one to an hourly retiree only because his agreement was negotiated as part of a collecitve bargaining process.

The undersigned is satisfied that the relief sought in this case is really equitable in nature, that any monetary amounts claimed are merely incidental to, or intertwined with, the equitable remedies sought, and that, therefore, under *Terry, supra,* Plaintiffs are not entitled to a trial by jury of their claims against Kelsey-Hayes and Hayes Wheels.

C. *Plaintiffs' Cases*

Plaintiffs rely heavily upon *Senn v. United Dominion Industries,* 951 F.2d 806 (7th Cir. 1992). There retired hourly employees of the company brought suit, under ERISA and § 301, to compel a successor corporation to abide by prior collective bargaining agreements which provided medical and life insurance benefits. With a limited amount of discussion, the Court held:

> Because the plaintiffs instituted a legal claim for breach of contract and sought legal relief in the form of compensatory damages pursuant to Section 301 of the LMRA, in addition to injunctive relief pursuant to [ERISA], the Seventh Amendment provided them with a right to a jury trial.
>
> 951 F.2d at p. 814.

Senn should not be followed for two reasons. First, the opinion on the jury trial issue is dictum, not necessary to the resolution of the case, because the Court also

held that judgment for the employer should have been entered on the merits. 951 F.2d at p. 818.

Secondly, *Senn* erroneously (and solely) relied upon *Tull v. United States,* 481 U.S. 412 (1987):

> The claim for monetary damages could be characterized as incidental to the request for an injunction. [But] it is well settled that when legal and equitable relief are separately authorized by statute, and the 'legal claim is joined with (the) equitable claim, the right to jury trial on the legal claim, including all issues common to both claims, remains intact. The right cannot be abridged by characterizing the legal claim as 'incidental' to the equitable relief sought. *Tull v. United States* . . . .'
>
> 951 F.2d at pp. 813-814.

In *Tull,* however, the statute, the federal Clean Water Act, specifically and separately authorized injunctive relief and civil monetary penalties. Section 301 states only that "suits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States . . . ," and is silent on *any* remedies available. 29 U.S.C. § 185.

Furthermore, in *Tull* the government sought civil penalties and (general, not statutory) injunctive relief against defendant under the Act for dumping fill on wetlands in Virginia. But when the case was filed, injunctive relief was pretty much unavailable (most of the property had been sold by defendant) and the government was seeking (statutory) penalties of more than $22,000,000. The Court first observed:

> We reiterate our previously expressed view that characterizing the relief sought is 'more important' than finding a previously analogous common law cause of action in determining whether the Seventh Amendment guarantees a jury trial.
>
> 481 U.S. at p. 421

In holding that defendant had a right to a jury trial to determine his liability for (although not the *amount* of) the legal penalty claims, and in response to the government's argument that the monetary relief was really "incidental to or intertwined with" the injunctive relief sought, the Court stated:

> This argument has at least three flaws. First, while a court in equity may award monetary restitution as an adjunct to injunctive relief, it may not enforce civil penalties . . . . Second, the Government was aware when it filed suit that relief would be limited primarily to civil penalties . . . . Finally, the Government was free to seek an equitable remedy in addition to, or independent of, legal relief. Section 1319 does not intertwine equitable relief with the imposition of civil penalties. Instead each kind of relief is separately authorized in a separate and distinct statutory provision . . . . In such a situation, if a 'legal claim is joined with an equitable claim, the right to jury trial on the legal claim, including all issues common to both claims, remains intact. The right cannot be abridged by characterizing the legal claim as 'incidental' to the equitable relief sought. [citing] *Curtis v. Loether*, 415 U.S. at 196, n. 11.'
>
> 481 U.S. at pp. 424-425.

Tull involved an action for $22,000,000 in statutory penalties, no request for statutory injunctive relief, and a claim for (general) injunctive relief which was largely moot. It is not surprising the Court found the monetary relief "not incidental" to the injunctive relief. *Tull* should provide no support for a finding of a right to jury trial in situations where (as in *Senn* and in the instant case) the relief sought is primarily equitable (injunctive, restitutionary, or specific performance) and the statute upon which the legal claim rests is silent as to available relief.

There also have been some district court cases which have held that there is a right to a jury trial in ERISA/

§ 301 retiree benefit cases. Those outside the Sixth Circuit, however, were all decided before *Terry* (and its re-emphasis upon the type of remedy, not the historical nature of the action), and generally rely upon the legal nature of the § 301 claim with little added discussion. *Bower v. Bunker Hill Co.*, 114 F.R.D. 587 (E.D. Wash. 1986); *Puz v. Bessemer Cement*, 700 F.Supp. 267 (W.D. Pa. 1988); *Hazel v. Lynch Corporation*, Memorandum Opinion, Southern District of Indiana (1986) (attached to Plaintiffs' Brief in Opposition). *Sullivan v. LTV Aerospace*, 850 F.Supp. 202 (W.D. N.Y. 1994) held that there was a right to a jury trial for unpaid severance benefits under ERISA alone. That case, however, relied upon *Stamps v. Michigan Teamsters*, 431 F.Supp. 745 E.D. Mich. 1977) (Joiner, J.), which was expressly disapproved in *Bair v. GMC, supra*, 895 F.2d at pp. 1096-1097, and is clearly contrary to the rule in this circuit announced in *Bair* and *Daniel, supra*.

Of the cases cited from the Sixth Circuit, two were decided before *Bair, Daniel*, and *Terry* and also focused on the legal nature of the § 301 claim, not the remedy. *Smith v. ABS Industries*, 653 F.Supp. 94 (N.D. Ohio 1986); *Local 836 (UAW) v. Echlin, Inc.*, 670 F.Supp. 697 (E.D. Mich. 1987) (Newblatt, J.) In the third, *Schalk v. Teledyne, Inc.*, Memorandum Opinion, Western District of Michigan (1993) (attached to Plaintiffs' Brief in Opposition), Judge McKeague, relying upon *Senn* and *Tull, supra*, held that Plaintiff retirees were entitled to a jury trial on their § 301 claim, and prior to a decision on the equitable ERISA claim. The court held:

> [P]laintiffs have requested [in addition to injunctive relief] damages suffered as a result of reduced benefits, defendants' refusal to provide benefits, and compensatory damages for expenses incurred in obtaining hospital and medical coverage. The Court finds that this type of relief is legal and entitled plaintiffs' to a jury trial.
>
> Memorandum Opinion, p. 8.

Schalk cannot be distinguished from the instant case, and the undersigned, for the reasons stated above, can only respectfully disagree with its analysis and conclusion.

The remaining cases cited by Plaintiffs do not compel a different result. *Bugher v. Feightner,* 722 F.2d 1356 (7th Cir. 1983), was an action by the trustees of a union pension plan (not the beneficiary) to recover delinquent contributions. *Bidlack v. Wheelabrator Corp.,* 993 F.2d 603 (7th Cir. 1993), a Seventh Circuit case decided after *Senn,* merely assumes a right to a jury trial without discussing the issue.

Apponi v. Sunshine Biscuits, Inc., 809 F.2d 1210 (6th Cir. 1987) was a diversity action by union employees to recover early retirement benefits pursuant to a pension plan collectively bargained with the employer. The action was based on breach of contract, common law fraud, and securities fraud. The Court held that the claims had to be treated as arising under § 301 and, inter alia, remanded the case for a jury trial as to whether the company had made certain representations, alleged as part of estoppel and waiver theories. However, *Apponi* did not involve an ERISA claim (the bakery had been shut down two years before ERISA was enacted), it was decided before *Bair* and *Daniel,* and there was no challenge to, or discussion of, the right to (as opposed to the scope of) a jury trial under the circumstances. The procedural context of the case is simply too different from that of the instant action to provide any reliable guidance on the jury trial issue.

The right to a jury trial was also not discussed in *Armistead v. Vernitron Corp.,* 944 F.2d 1287 (6th Cir. 1991); *Firestone v. Bruch,* 489 U.S. 101 (1989), held only that de novo review was the appropriate standard of review for a denial of ERISA benefits and also did not discuss the jury trial issue.

For all of the foregoing reasons, then, it is recommended that Defendant's Motion to Strike Jury Demand

and Prayer for Mental Distress Damages be granted. The parties are advised that any objections to this Report and Recommendation must be filed with the Court within ten (10) days after they are served with a copy, or further appeal from Judge Gadola's acceptance thereof is waived.

/s/ Thomas A. Carlson
THOMAS A. CARLSON
United States Magistrate Judge

DATED: 2/28/95

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Action No. 93-74824

Honorable Paul V. Gadola
U.S. District Judge

JOSEPH GOLDEN *et al.*,
Plaintiffs,

v.

KELSEY-HAYES COMPANY, *et al.*,
Defendants.

ORDER ACCEPTING MAGISTRATE JUDGE CARLSON'S FEBRUARY 28, 1995 REPORT AND RECOMMENDATION

The court, pursuant to Rule 72(b) of the Federal Rules of Civil Procedure, 28 U.S.C. § 636(b)(1)(B), and LR 72.1(d)(2) (E.D. Mich. Jan. 1, 1992), has reviewed the magistrate judge's February 28, 1995 report and recommendation as well as plaintiffs' March 10, 1995 objections and defendants' March 27, 1995 response filed thereto.[1] After conducting a *de novo* review, the court accepts the magistrate judge's report and recommendation as the court's findings and conclusions.

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[1] On April 3, 1995, plaintiffs filed an ex parte motion for leave to file a reply brief in excess of five pages. However, Local Rule 72.1(d)(2) has no provision for the filing of a reply brief of any length. The parties are limited to objections and a response to objections. As a result, the court will deny plaintiffs' motion, and it will not allow plaintiffs to file a reply brief.

NOW, THEREFORE, IT IS HEREBY ORDERED that the magistrate judge's February 28, 1995 report and recommendation is ADOPTED.

IT IS FURTHER ORDERED that defendants' motion to strike jury demand and prayer for mental distress damages is GRANTED.

IT IS FURTHER ORDERED that plaintiffs' ex parte motion for leave to file a reply brief in excess of five pages is DENIED. SO ORDERED.

Dated: 4/13/95

/s/ Paul V. Gadola
PAUL V. GADOLA
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Action No. 93-74824

Honorable Paul V. Gadola
U.S. District Judge

JOSEPH GOLDEN, ANGELO DEITOS, EDWARD JONES, IDA THOMASON, LUTHER PALMER, CAROLINE FORYS, JOSEPHINE THOMAS, JOHN HOYLE, ARTHUR SALLIS, THELMA SONGER, JOHN W. GALLOWAY, and ROGER FARRAR,
Plaintiffs,

v.

KELSEY-HAYES COMPANY,
Defendant.

MEMORANDUM OPINION AND ORDER GRANTING PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

This matter is before the court on plaintiffs' motion for a preliminary injunction pursuant to Rule 65(a) of the Federal Rules of Civil Procedure. Plaintiffs represent a proposed class of individuals seeking relief under the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, and the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132, from defendant Kelsey-Hayes Company for breach of a collective bargaining agreement and a welfare benefit plan. The court held a hearing on plaintiffs' motion on March 10, 1994. For the reasons discussed below, the court will grant plaintiffs' motion.

I. Facts

Plaintiffs are retired employees of defendant or their surviving spouses. They claim that defendant breached its promise to provide lifetime retiree health benefits at no cost. Defendant has provided health care benefits for plaintiffs pursuant to successive collective bargaining agreements with the United Auto Workers ("UAW"). This action involves plaintiffs from four separate bargaining units, each with its own set of successive contracts: (1) defendant's Detroit, Michigan and Romulus Michigan units; (2) defendants former Heintz Division in Philadelphia, Pennsylvania; (3) defendant's former SPECO Division in Springfield, Ohio; (4) defendant's former Gunite Division in Rockford, Illinois. Each of the collective bargaining agreements at issue contain similar insurance agreements that provide health care coverage for retirees and surviving spouses at specified negotiated levels.

In July 1987, defendant sold its Heintz, Gunite, and SPECO Divisions. As part of the purchase agreement, defendant agreed to assume the obligation of providing health insurance benefits for those employees who had retired before the closing date of the sale of the divisions. Following the sale, defendant has continued to provide health care coverage for its retirees from its three former divisions for the past six years at no cost.

In April 1993, defendant notified plaintiffs that starting January 1, 1994, it would modify retiree and surviving spouse health care benefits so as to require the payment of premiums and deductibles. Defendant would thereafter require payment of a monthly premium, an out-of-pocket deductible of $300 per person and $600 per family, and a twenty percent co-pay until an annual out-of-pocket maximum of $2,000 for an individual and $4,000 per family is reached. On December 23, 1993, plaintiffs filed the instant motion for a preliminary injunction that restrains

defendant from implementing the modifications to their health benefits.

Since plaintiffs filed their motion, the parties have reached an agreement on the provision of health benefits for retirees from defendant's Detroit and Romulus units during the pendency of this litigation. As a result, plaintiffs are now only seeking injunctive relief for retirees and surviving spouses from defendant's former Heintz, Gunite, and SPECO Divisions.

Plaintiffs contend that the collective bargaining agreements in force at the ttime of the sale of defendant's three divisions guaranteed the payment of specified health benefits for the lifetime of covered retirees and surviving spouses. Defendant contends that the collective bargaining agreements contain durational provisions that terminated all health care benefits for retirees upon expiration of the bargaining agreement.

II. Standard of Review for Preliminary Injunctions

Plaintiffs are seeking a preliminary injunction that requires defendant to reinstate the benefits that it provided prior to implementing the modifications. The decision of whether or not to issue a preliminary injunction lies within the discretion of the district court. *CSX Transp., Inc. v. Tennessee State Bd. of Equalization*, 964 F.2d 548, 552 (6th Cir. 1992). When determining whether to issue a preliminary injunction, a district court should address four factors:

i. the plaintiff's likelihood of success on the merits of the action;

ii. the irreparable harm to plaintiff that could result if the court does not issue the injunction;

iii. whether the interests of the public will be served; and

iv. the possibility that the injunction would cause substantial harm to others.

Forry, Inc. v. Neundorfer, Inc., 837 F.2d 259, 262 (6th Cir. 1987); *In re DeLorean Motor Co.*, 755 F.2d 1223 (6th Cir. 1985); *Mason Cty. Medical Ass'n v. Knebel*, 563 F.2d 256 (6th Cir. 1977).

III. Analysis

A. Likelihood of Success on the Merits

The principal issue is whether the plaintiffs have a vested right to receive lifetime health care benefits from defendant without cost, and whether defendant has a contractual right to modify and reduce the health care benefits provided for in collectivetly bargained agreements. Plaintiffs allege that defendant has reduced their health insurance benefits in violation of the LMRA and ERISA. If the health insurance benefits vest for the lifetime of the retirees, then defendant could not unilaterally modify or reduce those benefits.

In *UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984) the Sixth Circuit addressed the question of whether retirees' health insurance benefits terminate at the expiration of the current collective bargaining agreement or whether they continue for the lifetime of the retiree. The court stated that resolution of this question depends on the intent of the parties to the collective bargaining agreement. *Id.* at 1479. First, a court must look to the express provisions of the agreement construing each section "consistently with the entire document and the relative positions and purposes of the parties." *Id.* at 1479-80. Where the express language of a retiree benefit plan is ambiguous as to the duration of retiree health insurance, courts should look to other provisions of the agreement. *Id.* at 1482. In determining the duration of retiree health benefits, the court noted that

> examination of the context in which these benefits arose demonstrates the likelihood that continuing insurance benefits for retirees were intended. Benefits for retirees are only permissive not mandatory subjects of collective bargaining. As such, it is unlikely that such benefits, which are typically understood as a form of delayed compensation or reward for past services, would be left to the contingencies of future negotiations.

Id. (citations omitted). The Sixth Circuit recognized that employees are aware when they accept retiree benefits in exchange for lower wages, that they cannot rely on their union to maintain those benefits once they have retired and left their bargaining unit. Thus, "finding an intent to create interminable rights to retiree insurance benefits in the absence of explicit language, is not, in any discernible way, inconsistent with federal labor law." *Id.*

The most important holding of the *Yard-Man* decision is a recognition of an inference of interminable benefits absent express language to the contrary. In this context, the Sixth Circuit stated that

> retiree benefits are in a sense "status" benefits which, as such, carry with them an inference that they continue so long as the prerequisite status is maintained. Thus, when the parties contract for benefits which accrue upon achievement of retiree status, there is an inference that the parties likely intended those benefits to continue as long as the beneficiary remains a retiree. This is not to say that retiree insurance benefits are necessarily interminable by their nature. Nor does any federal labor policy identified to this Court presumptively favor the finding of interminable rights to retiree insurance benefits when the collective bargaining agreement is silent. Rather, as part of the context from which the collective bargaining agreement arose, the nature of such benefits simply pro-

> vides another inference of intent. Standing alone, this factor would be insufficient to find an intent to create interminable benefits.

Id. at 1482 (citation omitted). The decision in *Yard-Man* has been consistently followed in more recent cases in the Sixth Circuit. *See, e.g., Smith v. ABS Indus., Inc.*, 890 F.2d 841 (6th Cir. 1989) (retiree benefits were vested); *Policy v. Powell Pressed Steel Co.*, 770 F.2d 609 (6th Cir. 1985) (duty to provide retiree health benefits did not end with expiration of collective bargaining agreement), *cert. denied*, 475 U.S. 1017 (1986); *Weimer v. Kurz-Kasch, Inc.*, 773 F.2d 669 (6th Cir. 1985); *UAW v. Cadillac Malleable Iron Co.*, 728 F.2d 807 (6th Cir. 1984). Thus, any determination of the duration of retiree health benefits must be made in the context of *Yard-Man* and its progeny.

In support of their claim for lifetime retiree health benefits, plaintiffs rely upon the express provisions of the collective bargaining agreements, portions of summary plan descriptions issued by defendant to its employees that explained the retiree benefits that it was providing to them, and the conduct of defendant since it sold the SPECO, Gunite, and Heintz Divisions.

Plaintiffs claim that the language of the collective bargaining agreements themselves indicates that their health benefits were intended to vest for their lifetimes. Provisions of the SPECO, Gunite, and Heintz agreements directly tie retiree eligibility for health care coverage to eligibility for pension benefits. Surviving spouse eligibility is also tied to eligibility for survivor income benefits. For example, the SPECO agreement expressly states that surviving spouse health benefits last for as long as monthly survivor insurance benefits are provided. Plaintiffs contend that since pension and survivor income benefits are provided for life, then health care benefits, which complement and are tied directly to the pension agreement, were also intended to last for the lifetime of the

retirees. In addition, there are no provisions of the three collective bargaining agreements that allow for modification or amendment of the retiree health care plans.

Plaintiffs also present portions of Summary Plan Descriptions ("SPD") that defendant provided for its employees in order to explain the benefits that they were guaranteed. In a 1977 SPD issued by defendant to empoyees of its Heintz Division, defendant explained the retiree health benefits. The Heintz SPD stated with regard to retiree benefits that "[w]hen you are retired, your life insurance and all of your health care coverages, except for vision, are continued without cost to you." In addition, the SPD states that those employees who leave the company at age sixty-five without enough years of service to qualify for retirement, but enough to qualify for special status, are guaranteed that "all of your health care coverages except vision care will be continued for the rest of your life without cost to you." The SPD also contains language excepting retirees from durational provisions for various insurance benefits.

In a 1983 SPD for the Gunite Division insurance plan, defendant stated that "all of your Health Care Coverages will be continued for the rest of your life without cost to you. Kelsey-Hayes also pays the full cost of Health Care Coverages for surviving spouses and eligible children of deceased pensioners and of employees who die after they are eligible to retire voluntarily under the Kelsey-Hayes Pension Plan." During oral argument, counsel also represented that an SPD for the SPECO Division also contained similar language.

Evidence from an SPD is especially compelling because the Sixth Circuit has decided that "statements in a summary plan are binding and if the statements conflict with those in the plan itself, the summary shall govern." *Edwards v. State Farm Mut. Auto. Ins. Co.*, 851 F.2d 134, 136 (6th Cir. 1988). Thus, even if the promises made by defendant in the SPDs are contrary to the language of the

collective bargaining agreements, defendant is bound by the provisions of the SPD.

Plaintiffs also point to defendant's conduct to demonstrate that the parties to the collective bargaining agreements intended that retirees receive lifetime health bnefits. In support of the performance of its obligations regarding retiree welfare benefits, and as part of its sale of its Heintz and SPECO Divisions, defendant agreed to provide an irrevocable letter of credit in the amount of $20 million which would be in effect through the year 2002. The letter of credit indicates that defendant intended to provide health insurance benefits well in to the future. In addition, since the sale of its three divisions, defendant has continued for six years to provide the full cost of health care benefits to its retirees and surviving spouses.

Defendant claims that durational clauses contained in each of the collective bargaining agreements allow for the termination of retiree health benefits following expiration of the collective bargaining agreement. However, the Sixth Circuit has found that such routine durational clauses do not outweigh the implication that retiree health benefits were intended to outlast the life of a particular bargaining agreement. *Yard-Man*, 716 F.2d at 1482-83. In *Schalk v. Teledyne, Inc.*, 751 F. Supp. 1261 (W.D. Mich. 1990), *aff'd*, 948 F.2d 1290 (6th Cir. 1991), the court was presented with similar general durational provisions. It noted that

> the existence of a general durational clause which provide[s] that the collective bargaining agreement should remain in effect until a certain date d[oes] not demonstrate an intent that all benefits described in the agreement also terminate[] on that date.

Id. at 1265 (citing *Yard-Man*, 716 F.2d at 1482-83). Thus, even with a general durational provision, such provisions only refer to the length of the agreement and not the period of time contemplated for retiree benefits.

Other courts have reached similar conclusions concerning the application of general durational clauses in collective bargaining agreements. *See, e.g., Weimer v. Kurz-Kasch, Inc.*, 773 F.2d 669, 676 (6th Cir. 1985); *United Paper Workers v. Muskegon Paper Box Co.*, 704 F. Supp. 774, 777-78 (W.D. Mich. 1988).

Defendant contends, however, that the durational provisions that it cites are not general clauses, but are instead specific provisions limiting the length of retiree benefits. The court finds, however, that the provisions cited by defendant are merely general durational clauses that refer to the expiration of the collective bargaining agreement. Defendant cites provisions that merely incorporate supplemental agreements concerning pension plans, unemployment benefit plans, and health insurance programs into the collective bargaining agreement itself. Because such incorporated supplemental agreements would terminate on the date when the collective bargaining agreement terminated says nothing about the duration of particular benefits, especially benefits for retirees.[1] Defendant does not cite to any provision that specifically limits the duration of any particular benefits. This was also the key element that was missing from the durational clause addressed by the Sixth Circuit in *Yard-Man*. *Yard-Man*, 716 F.2d at 1482.

Defendant has also presented some affidavits from Kelsey-Hayes officials who claim that the company never intended to provide lifetime retiree health benefits. However, plaintiffs have also presented an affidavit from another company official who participated in collective bargaining negotiations indicating that unionized employees wer told that they would receive lifetime retiree health benefits.

---

[1] Given defendant's logic, because its pension plan was incorporated into the collective bargaining agreement, its obligation to provide pensions ended with the expiration of the agreement.

The court finds that plaintiffs have demonstrated a strong likelihood of success on the merits of their claim for lifetime retiree health care benefits. There are no express provisions of the collective bargaining agreements that limit the duration of retiree health benefits. In fact, each of the collective bargaining agreements provides that eligibility for retiree health benefits is tied to eligibility for lifetime pension benefits or survivor spouse income. The summary plan descriptions indicate that retiree benefits were intended to last for the life of the retiree, without cost, regardless of the termination of the collective bargaining agreement. Defendant's conduct also indicates that plaintiffs' benefits were vested. After defendant sold its three divisions it continued for six years to pay the full cost of retiree health benefits. Combined, all of these facts indicate that plaintiffs' retiree health benefits were intended to last for their lifetimes without modification. This evidence of intent supports the inference established in *Yard-Man,* that retiree health benefits are interminable.

B. Irreparable Harm to Plaintiffs

If a preliminary injunction is not entered, plaintiffs allege that they will suffer irreparable harm because they will be forced to choose between paying for needed medical procedures and paying for basic necessities. Plaintiffs are retirees or surviving spouses of retirees who allegedly do not have the financial resources to begin paying premiums and deductibles on their health care. Plaintiffs contend that they may be forced to forego needed medical care because they would have to absorb part of the cost of the care under defendant's modified benefits plan. In support of their allegations, plaintiffs have submitted numerous affidavits from individual retirees detailing the impact of the modifications of the benefits plan to their finances.

Defendant claims that plaintiffs have not established irreparable injury for all three of its former divisions.

Plaintiffs have not presented affidavits from retirees from the Heintz or Gunite Divisions concerning the injury that they would suffer. In addition, defendant claims that plaintiffs have failed to show that money damages would not fully compensate them.

The court finds, however, that plaintiffs have established that they would suffer irreparable injury absent injunctive relief. Numerous courts have found that reductions in retiree insurance coverage constitute irreparable harm, meriting a preliminary injunction. *United Steelworkers of America v. Textron, Inc.*, 836 F.2d 6 (1st Cir. 1987) (retirees as a group have less resources and are more vulnerable to emotional distress due to the imposition of additional insurance costs); *Schalk v. Teledyne, Inc.*, 751 F. Supp. 1261 (W.D. Mich. 1990) (because retirees live on fixed incomes, small increases in expenses create extreme financial hardship; they are more likely to suffer uncertainty and worry over the new costs associated with the modified plan), *aff'd*, 951 F.2d 1290 (6th Cir. 1991); *Mamula v. Satralloy, Inc.*, 578 F. Supp. 563 (S.D. Ohio 1983). The court finds that the evidence presented by plaintiffs demonstrates that similar harm would befall retirees from the SPECO, Gunite, and Heintz Divisions were the modifications to plaintiffs' health benefits continued.

C. Harm to Others

If a preliminary injunction is entered restraining defendant from modifying its retiree health care benefits, defendant will be forced to continue paying the full cost of health insurance for its retirees. For the past six years, defendant has paid this cost. Thus, if a preliminary injunction is entered, defendant will suffer a financial loss during the pendency of this litigation that it may recoup if it is ultimately successful on the merits. Defendant claims that it will cost an additional $160,000 per month, over the cost of the modified plan, to maintain full benefits for plaintiffs. However, defendant has made no show-

ing that requiring it to reinstate the old retiree benefit plan would cause it severe financial hardship. The fact that defendant has paid the full cost of plaintiffs' health insurance for the past six years also indicates that a continuation of that situation would not cause economic dislocation.

The court finds that the harm to defendant of reinstating its former retiree health benefits would not outweigh the harm suffered by plaintiffs. Several other courts have found similarly that the harm caused an employer that is required to maintain health benefits because of a preliminary injunction is outweighed by the harm caused to retirees forced to go without medical care or forced to choose between basic necessities in order to pay premiums and deductible. *Schalk*, 751 F. Supp. at 1268; *Schultz v. Teledyne, Inc.*, 657 F. Supp. 289, 293 (W.D. Pa. 1987). Defendant has paid the full cost of health benefits since 1987, an injunction requiring them to continue to make those payments until this litigation is resolved does not outweigh the harm caused to plaintiffs.

D. Interests of the Public

Plaintiffs allege that the public interest favors a preliminary injunction. Plaintiffs claim that ERISA and the LMRA strongly favor the protection of the rights of employees guaranteed by welfare benefit plans that are part of collective bargaining agreements. ERISA provides that the policy behind it is to "protect the interests of participants in employee benefit plans . . . by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, . . . by providing for appropriate remedies, sanctions, and ready access to the Federal court." 29 U.S.C. § 1001(b). In addition, the LMRA favors enforcement of collective bargaining agreements so as to protect the contractual rights of employees and employers. In *Schalk*, the court indicated that the "public interest lies in protecting the legitimate expecta-

tion of retirees that their health insurance will be provided for the rest of their lives." *Schalk*, 751 F. Supp. at 1268.

Defendant claims that the public interest lies in allowing companies to distribute the burden of greater health care costs to the beneficiaries of the coverage. Without such burden shifting, companies that create jobs and enrich communities would be hurt.

In the circumstances of this case, however, the court finds that the public interest favors issuance of a preliminary injunction.

E. Security Bond

Pursuant to Rule 65(c), no "preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered" by defendant. Fed. R. Civ. P. 65(c). A district court must expressly consider the question of requiring a bond before issuing a preliminary injunction. *Roth v. Bank of the Commonwealth*, 583 F.2d 527 (6th Cir. 1978). The amount of security required and whether a bond is needed is up to the discretion of the district court.

Defendant estimates that if it is required to reinstate its old health benefits, it will cost the company approximately $160,000 a month. As a result, defendant has requested a bond of $1 million. In *Schalk*, based on defendant's claim that it would cost an additional $90,000 per month to maintain its old health plan, the district court required plaintiffs to post a $50,000 bond to support a preliminary injunction containing similar modifications of a retiree health plan. *Schalk*, 751 F. Supp. at 1269. Under the circumstances of this case, the court finds that a bond of $1 million would be excessive. However, given the burden placed on defendant, the court will require plaintiffs to post a bond of $100,000 before it will issue a preliminary injunction.

IV. CONCLUSION

The court will grant plaintiffs' motion for a preliminary injunction ordering defendant to reinstate the health benefits to retirees and surviving spouses as provided for under the terms of the collective bargaining agreements in force at the time that defendant sold the SPECO, Gunite, and Heintz Divisions. Plaintiffs have demonstrated that they will likely prevail on the merits and that they will suffer irreparable harm absent an injunction. In addition, the harm suffered by defendant as a result of an injunction would be outweighed by the harm suffered by plaintiffs without such relief.

ORDER

THEREFORE, IT IS HEREBY ORDERED that plaintiffs' motion for a preliminary injunction is GRANTED.

IT IS FURTHER ORDERED that upon the posting of a $100,000 security bond by plaintiffs, defendant Kelsey-Hayes shall reinstate the health care benefit plans that were in effect prior to January 1, 1994 for those persons eligible under the collective bargaining agreements for the SPECO, Gunite, and Heintz Divisions. This order shall remain in effect until further order of this court.

SO ORDERED.

Dated: 3/14/94

/s/ Paul V. Gadola
PAUL V. GADOLA
United States District Judge

Supreme Court, U.S.
FILED
MAY 17 1996
CLERK

(2)

No. 95-1674

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

JOSEPH GOLDEN, ANGELO DEITOS, EDWARD JONES, IDA THOMASON, LUTHER PALMER, CAROLINE FORYS, JOSEPHINE THOMAS, JOHN HOYLE, ARTHUR SALLIS, THELMA SONGER, JOHN W. GALLOWAY and ROGER FARRAR, on behalf of themselves and a class of persons similarly situated,

Petitioners,

v.

KELSEY-HAYES COMPANY and HAYES WHEELS INTERNATIONAL, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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34 pp

COUNTER-STATEMENT OF QUESTION PRESENTED

Whether Plaintiffs can obtain a jury trial in an action for an injunction to recover future benefits under an ERISA-regulated welfare benefit plan.

PARTIES BELOW

Petitioners Joseph Golden, Angelo Deitos, Edward Jones, Luther Palmer, Caroline Forys, Josephine Thomas, Arthur Sallis, Thelma Songer, John W. Galloway and Roger Farrar were Plaintiffs in the District Court, and Petitioners for a writ of mandamus in the Court of Appeals. Ida Thomason and John Hoyle are not really Petitioners in this Court; they were original Plaintiffs, but the civil action was dismissed as to Thomason because she is neither a participant nor beneficiary of the welfare benefit plan, nor a member of the plaintiff class, and Hoyle is dead. Stephen Santangelo is a Plaintiff in the District Court, replacing John Hoyle, but is not a Petitioner in this Court.

Respondents Kelsey-Hayes Company and Hayes Wheels International, Inc. are Defendants in the District Court, and were Respondents in the Court of Appeals. Kelsey-Hayes Company is a wholly-owned subsidiary of Varity Corporation, a publicly traded corporation, and is now known as "VarityKelsey-Hayes Company." Respondent Hayes Wheels International, Inc. is publicly traded. It has agreed to merge with MWC Holdings, Inc., a publicly traded corporation. Neither Respondent has any non-wholly-owned subsidiary.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

JOSEPH GOLDEN, ANGELO DEITOS, EDWARD JONES, IDA THOMASON, LUTHER PALMER, CAROLINE FORYS, JOSEPHINE THOMAS, JOHN HOYLE, ARTHUR SALLIS, THELMA SONGER, JOHN W. GALLOWAY and ROGER FARRAR, on behalf of themselves and a class of persons similarly situated,

Petitioners,

v.

KELSEY-HAYES COMPANY and HAYES WHEELS INTERNATIONAL, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

COUNTER-STATEMENT OF THE CASE

a. This is not, as Petitioners claim, just an action for breach of labor agreements, brought under § 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185. This is really an action to recover benefits allegedly due under the terms of a welfare benefit plan, and to clarify rights to future benefits under the terms of the plan, filed under two statutes, not just one: LMRA § 301(a), and § 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a)(1)(B). (Complaint ¶¶ 1-2; First Amended Complaint ¶¶ 1-2) Count I of the Complaint was brought under the LMRA, Count II under ERISA. Count III attempts to plead an estoppel claim under both statutes.

Counts I and II of the original Complaint sought, in identical terms, the following relief:

> (A) A declaratory judgment that Kelsey-Hayes is contractually obligated to provide class members and eligible dependents with the health care benefits negotiated by Kelsey-Hayes and the UAW for the duration of the lives of retirees and spouses and for the duration of the disability for employees who are totally and permanently disabled.
>
> (B) Preliminary and permanent injunctive relief requiring Kelsey-Hayes to reinstate the health care benefits negotiated by Kelsey-Hayes and the UAW for class members and eligible dependents for the duration of the lives of retirees and spouses and for the duration of the disability for employees who are totally and permanently disabled.
>
> (C) Judgment against Kelsey-Hayes in an amount equal to all costs and expenses sustained by class members and eligible dependents as a result of its refusal to provide health care benefits negotiated by Kelsey-Hayes and the UAW, including but not limited to:

(1) All premiums and co-pays paid by retirees, surviving spouses and employees for health care benefits which were formerly paid by Kelsey-Hayes.

(2) All direct payments and bills for health care which formerly were covered by the company paid health care plan.

(D) Judgment against Kelsey-Hayes in an amount to compensate class members for damages for mental distress and anguish suffered by class members as a result of Kelsey-Hayes's breach of the agreements and plans.

(E) Reasonable attorneys fees and costs of this lawsuit.

(F) Such further relief as may be deemed necessary and proper.

(R.1: Complaint pp. 9-10, 11-12, ¶¶ A-F; App. 20a-21a) The only "damages" sought were damages for mental distress and anguish. (Complaint pp. 9, 11, ¶ D) Plaintiffs stipulated to strike the prayer for mental distress damages, because such damages cannot be recovered under either ERISA or the LMRA. The District Court struck mental distress damages, in the same Order that struck the Jury Demand. (Pet. App. 37a, 52a) Plaintiffs amended paragraph C to insert the word "damages," more than a year after the case was filed, in an attempt to shore up their jury demand. (Pet. App. 17a n.10)

b. This civil action involves retired employees of Kelsey-Hayes Company who during their employment were represented for collective bargaining by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO ("UAW"), and five of its local unions; and surviving spouses of such retirees.

Since the 1960s Kelsey-Hayes has, pursuant to collective bargaining agreements ("CBAs") with the UAW and UAW Locals, provided generous health benefits to UAW retirees and surviving spouses. Over time Kelsey-Hayes gradually assumed the entire premium cost. But health care was never free to pensioners. Retirees still had certain co-payment requirements, certain benefits had an annual cap, and most benefits were limited to reasonable and customary charges with retirees responsible for excess charges.

Kelsey-Hayes sold its SPECO, Heintz, and Gunite plants to two other companies in 1987. (R. 19: Op. 2) All employees at those plants terminated their employment with Kelsey-Hayes at that time. Kelsey-Hayes' collective bargaining agreements at those plants have long since expired. Kelsey-Hayes has continued to provide welfare benefits to persons who retired from those plants before the sale, including UAW retirees and surviving spouses.

In December 1992, Kelsey-Hayes Company split into two companies: Kelsey-Hayes Company, which continued the brake business; and Hayes Wheels International, Inc. ("Hayes Wheels"), which continued the wheel business.[1] The two companies also split the sponsorship and administration of pension and welfare benefit plans for the pre-split retirees.

On April 26, 1993, Kelsey-Hayes and Hayes Wheels made separate announcements that they would modify health benefits provided to retirees and surviving spouses,

[1] Hayes Wheels is the entity that was the Kelsey-Hayes Company, but is renamed. The current Kelsey-Hayes Company was newly incorporated in December 1992, and assigned the rights and liabilities attendant to the brake and other non-wheel businesses.

effective January 1, 1994. The changes implemented included imposition of a monthly premium contribution; increased co-payments and annual deductible requirements; a change in the way coverage was coordinated with Medicare; and a lifetime benefit cap of $500,000 per beneficiary. Health benefits were not terminated for any person. The monthly premium was $41.00 for Joseph Golden, for medical, dental and hearing coverage for him and his wife; $84.20 for Edward Jones, a SPECO retiree who is not yet Medicare-eligible, and his wife; and $7.00 for Luther Palmer and his wife. (Affidavit of Golden ¶ 6; Affidavit of Jones ¶ 7; Affidavit of Palmer) Also, the "Special Age 65 Benefit" was eliminated. This was a monthly payment to pensioners who were at least 65 years old, to reimburse part of the cost of the Medicare Part B premium. Although this was a welfare benefit, this amount was added to the monthly pension check.

These changes were extended to all pensioners from Kelsey-Hayes' sold SPECO, Heintz and Gunite plants. The changes were also extended to pensioners from the Detroit and Romulus plants who were at least 65 years old and eligible for Medicare, pursuant to a provision in the CBAs that allows the Company to reduce or eliminate benefits to persons eligible for statutory benefit programs. No changes were implemented for any Brighton and Milford pensioners; nor for Detroit and Romulus pensioners who were not yet 65 years old, and thus not eligible for Medicare.

More than 90% of the class enrolled for the modified benefit program that went into effect on January 1, 1994. (Affidavit of Jill Wellman ¶ 12) For almost all of the persons who enrolled in the modified welfare benefit plan, the monthly contribution is deducted from their monthly pension check. (Affidavit of Caroline Forys, attachment;

Affidavit of Joseph Golden ¶ 7) This is done only if the pensioner consents to it in writing, in advance.

c. The named Plaintiffs are nominal. The UAW selected and retained their lawyers, and recruited the named Plaintiffs later. The UAW pays Plaintiffs' legal fees and costs, and posted the injunction bond. (R. 28)

Although Plaintiffs and the UAW had more than eight months' warning of the benefit changes, Plaintiffs did not file a motion for preliminary injunction until December 23, 1993—the last court day before Christmas, and only four court days before the benefit plan went into effect. The automobile industry, including Kelsey-Hayes and Hayes Wheels, shuts down every year from the close of business on December 23 until after the New Year holiday. By filing a motion for preliminary injunction on December 23, Plaintiffs' counsel ensured that, if a hearing was held before January 1, then it would be difficult for the Company's lawyers to contact management or prepare a substantive defense.

d. The benefit changes did not continue in effect for pensioners from the Detroit and Romulus plants. Those plants are still operating, and have collective bargaining agreements in place. UAW Local 78's contracts with Hayes Wheels and Kelsey-Hayes were scheduled to expire February 1, 1994, barely a month after the changes took place. During negotiations for new contracts, Kelsey-Hayes and Hayes Wheels entered into separate letter agreements with UAW Local 78, rescinding most of the changes for Medicare-eligible pensioners from the Detroit and Romulus plants, retroactive to January 1, 1994, subject to the outcome of this case. The only change that remains in effect is the $2.00 per month premium contribution for pensioners age 65 or older. As a result of those

agreements, Plaintiffs withdrew their request for a preliminary injunction in favor of Detroit and Romulus pensioners, and sought one only for pensioners from the sold SPECO, Heintz and Gunite plants.

The preliminary injunction became effective April 18, 1994. It reinstated the former benefit plan for Heintz, Gunite and SPECO pensioners.

e. On December 20, 1994, Plaintiffs filed a First Amended Complaint which added Hayes Wheels as a Defendant. It also slightly recharacterized the monetary relief sought: Plaintiffs no longer sought "an amount equal to" their increased costs for health care, they now sought "an amount *of damages* equal to" their increased costs. (First Amended Complaint pp. 9-10, ¶ C [emphasis supplied])

REASONS THE WRIT SHOULD NOT BE GRANTED

I.

THE DECISION BELOW FAITHFULLY FOLLOWED THIS COURT'S PRIOR PRONOUNCEMENTS.

a. Whether a party is entitled to a jury trial under the Seventh Amendment depends on whether his claim is equitable or legal in nature. The Court of Appeals correctly stated and applied the applicable legal standard: the two-part test prescribed by *Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*, 494 U.S. 558 (1990). First, the Court must "compare the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity." *Id.* at 565. Second, it must "examine the remedy sought and determine whether it is equitable or legal in nature." *Id.* The second inquiry is more important. *Id.* The remedy factor is

so much more important that one Justice advocated discarding the first factor entirely as useless, because the remedy trumps it every time. *Id.* at 574 (Brennan, J.).

The court below correctly stated and applied the *Terry* test. Petitioners acknowledge that *Terry* provides the touchstone. (Pet. 6) They simply disagree with that Court's application of the second, more important inquiry. This Court normally does not grant a petition when the asserted error consists of the misapplication of a properly stated rule of law. S. Ct. R. 10. It should not grant the petition in this case.[2]

b. This case is not just analogous to, it is, a breach of trust case and equitable under 18th-Century practice. This case is brought by beneficiaries of a welfare benefit plan against the administrators of the benefit plans. (First Amended Complaint ¶ 45) In *Terry*, the entire Court agreed that an action by a trust beneficiary against a trustee is equitable in nature, and no jury trial would be available. *Terry*, 494 U.S. at 566 (Marshall, J.); *Id.* at 583 (Stevens, J.); *Id.* at 585 (Kennedy, J., dissenting).[3] In *Mertens v. Hewitt Assoc.*, 508 U.S. 248 (1993), this Court reiterated that the courts of equity had exclusive jurisdiction over virtually all actions by beneficiaries for breach

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[2] Respondents disagree with two aspects of the Court of Appeals's analysis. The Court of Appeals analogized this case to a breach of contract case; it is, on the contrary, a breach of trust case. (Pet. App. 20a) That Court also held incorrectly that it could disregard ERISA in an action to recover future benefits under an ERISA-regulated benefit plant. (Pet. App. 19a n.11) But the dispositive issue was the equitable nature of the relief sought, and that Court's analysis was correct on that issue.

[3] Justice Brennan's concurring opinion did not address this point, because it advocated dropping the 18th-Century analog test altogether. 494 U.S. at 574 (Brennan, J.).

of trust, so any such action under ERISA is equitable in nature. ERISA federalized the law of trusts as it applied to pension and welfare benefit plans, and courts must be guided by equitable trust law principles in deciding benefits cases under ERISA. *Varity Corp. v. Howe*, 116 S. Ct. 1065, 1170 (1996); *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 111 (1989). ERISA, and the principles of trust law federalized by ERISA, apply to benefit plans established through collective bargaining. ERISA § 4(a)(3), 29 U.S.C. § 1003(a)(3); *Milwaukee Brewery Workers' Pension Fund v. Jos. Schlitz Brewing Co.*, 115 S. Ct. 981 (1995); *Firestone*, 489 U.S. at 110-11; *Central States, Southeast and Southwest Areas Pension Fund v. Central Trans., Inc.*, 472 U.S. 559, 570 (1985) (involved both pension and welfare plans); *Franchise Tax Board v. Construction Laborers Vacation Trust*, 463 U.S. 1, 24 n.26 (1983); *NLRB v. Amax Coal Co.*, 453 U.S. 322, 329-34 (1981).

Petitioners cannot obtain a jury trial simply because LMRA § 301(a) provides an alternative jurisdictional basis. Even before ERISA was enacted, jury trial was not available in an action to recover retirement benefits under LMRA § 301 or diversity jurisdiction. *Porter v. Central States, Southeast and Southwest Areas Pension Fund*, 98 L.R.R.M. (BNA) 3210, 3211 (N.D. Iowa 1978); *Davis v. Huge*, 91 L.R.R.M. (BNA) 2234, 2235 (E.D. Ky. 1975); *Sichko v. Lewis*, 191 F. Supp. 68 (W.D. Pa. 1960); *Accord Nedd v. United Mine Workers*, 556 F.2d 190, 207 (3rd Cir. 1977), *cert. denied*, 434 U.S. 1013 (1978) (no jury trial in pre-ERISA action by beneficiaries against pension fund fiduciaries brought under LMRA § 301); *Local No. 92, Int'l Ass'n of Bridge, Structural and Ornamental Iron Workers v. Norris*, 383 F.2d 735, 740-41 (5th Cir. 1967) (no jury trial in action for accounting against fiduciary under LMRDA

§ 501). All those cases recognized that the action was essentially an equitable action in trust. *Cf. McCraw v. United Ass'n of Journeymen and Apprentices of Plumbing and Pipe Fitting Indus.*, 341 F.2d 705, 709 (6th Cir. 1965) (no jury trial in action for reinstatement in union under LMRDA §102, where money damages sought were incidental to equitable relief).

A plaintiff's claim to benefits under collectively-bargained welfare plans states only a single cause of action, although he may cite two jurisdictional statutes. *Slaughter v. AT&T Info. Sys. Inc.*, 905 F.2d 92, 93-94 (5th Cir. 1990) (claims under ERISA and LMRA state same cause of action). An action to recover benefits is equitable in nature, even when the plaintiff seeks those benefits under both LMRA § 301 and ERISA § 502. *See, e.g., United Steelworkers v. Connors Steel Co.*, 855 F.2d 1499, 1509-10 (11th Cir. 1988), *cert. denied*, 489 U.S. 1096 (1989); *United Steelworkers v. New Jersey Zinc Co.*, 828 F.2d 1001, 1004 (3rd Cir. 1987); *Unitis v. JFC Acquisition Co.*, 643 F. Supp. 454, 461 (N.D. Ill. 1986); *United Electrical Workers v. Amcast Indus. Corp.*, 634 F. Supp. 1135, 1144 (S.D. Ohio 1986).

These decisions contradict Petitioners' argument that every case brought under LMRA § 301 is a "breach of contract" case, and thus legal. This Court has rejected that broad argument that all LMRA § 301 cases are analogous to breach of contract cases, in *Terry*, 494 U.S. at 568. *Not one justice* there opined that *Terry* was just a breach of contract case, or that all LMRA § 301 cases are legal in nature. Collective bargaining was illegal at common law, so there was no 18th-Century analog in breach of contract. *Id. Terry* was a "hybrid" § 301 case: union members claimed that their employer breached the collective bargaining agreement, and that their union breached its duty of fair representation by failing to pursue their

grievances. The four Justices who joined Part III-A of the lead opinion thought that case evenly split between two 18th-century analogs—breach of trust (equitable) and breach of contract (legal)—and that issue too close to call. 494 U.S. at 568-70. Only one Justice thought the case had a legal 18th-century analog—but the analog was legal malpractice, not breach of contract. *Id.* at 582. What tipped the case toward the law side, and a jury trial, was the remedy sought: damages. *Id.* at 570-72.

An action by a plan beneficiary against a plan administrator to recover benefits under the terms of an ERISA-regulated benefit plan, of course, is not so split: it is not just analogous to, it *is*, a breach of trust case and inherently equitable. *Id.* at 566, 583, 585 (action by beneficiary against trustee is equitable and jury trial is not available); *Mertens*, 113 S. Ct. at 2068 (action by beneficiary is equitable); *Firestone*, 489 U.S. at 111 (law of employee benefits is federalized law of trusts).

c. Petitioners' argument that this is a simple contract case ignores the kind of "contract" involved here, and the kind of claim.

First, the "contracts" establish "welfare benefit plans" under ERISA. In the LMRA Count Plaintiffs describe them as "a series of collective bargaining agreements *and related benefit plans.*" (First Amended Complaint ¶ 30 [emphasis supplied]; ¶¶ 31-35, 42 all refer to "the negotiated agreements and related benefit plans".) In this case, the CBAs at four of the five units[4] consisted of a basic agreement, separate pension agreement, and a separate insurance agreement. The latter two were incor-

[4] Except Gunite, where the bare bones of the health benefit plan were sketched out in the basic agreement.

porated by reference in each basic agreement, by their terms expired when the basic agreement did, and were exempted from the grievance procedure. It is the Insurance Agreements—the "related benefit plans"—that Plaintiffs are trying to enforce here. Plaintiff acknowledge that the contracts formed a "welfare benefit plan" under ERISA. (First Amended Complaint, Count II, ¶ 44)

Second, the "contracts" are *expired* contracts. They are no longer legally enforceable, and LMRA § 301 no longer provides the courts with subject matter jurisdiction to enforce the expired contracts. *Litton Financial Printing Div. v. NLRB*, 501 U.S. 190, 206 (1991). If the collective agreements are enforceable at all, it is because, as Plaintiffs allege, their health benefits "vested" on retirement, and the plan survives as a welfare benefit plan enforceable under ERISA § 502(a)(1)(B)—a constructive trust, requiring Kelsey-Hayes and Hayes Wheels to provide benefits to beneficiaries for their future welfare. "Trust," "benefits," "beneficiaries," "vesting," and future maintenance are trust concepts, not contract concepts. And actions by trust beneficiaries are equitable in nature.

Third, the "contracts" are contracts to which Plaintiffs are not parties. They are third- party "beneficiaries" of the contracts, that is, of the welfare benefit plan. ERISA § 3(8), 29 U.S.C. § 1002(8).[5] They sue Kelsey-Hayes and Hayes Wheels in their capacity as "administrators" of the

[5] Plaintiffs alleged that they are "participants," ERISA § 3(7), 29 U.S.C. § 1002(7), but only eight of them are. A "participant" must be a present or former employee, and the three surviving spouses are not. All eleven of them are "beneficiaries." ERISA § 3(8), 29 U.S.C. § 1002(8). Ida Thomason was neither, and her claim has been dismissed in the District Court; she is no longer a Plaintiff, and not really a Petitioner here.

welfare benefit plans.[6] A "beneficiary" of a trust had no cause of action at law in the 18th Century. His interest was purely equitable, his remedies only equitable, and his claims against either the trustee or any third party could be entertained only in equity. IV SCOTT ON TRUSTS § 281, p. 2332 (3d ed. 1967); *Smith's Lessee v. McCann*, 65 U.S. (24 How.) 398, 406 (1860); *Nedd*, 556 F.2d at 207.[7]

Fourth, the LMRA and ERISA claims in this case are not "separate and distinct," as Petitioners argue. In their Motion for Preliminary Injunction, they made no distinction between an LMRA claim and an ERISA claim. They relied not only on collective bargaining agreements, but very heavily on the summary plan descriptions ("SPDs")—a document that ERISA requires the administrator to prepare, in order to inform beneficiaries of the terms of the benefit plan. ERISA § 101(a), 29 U.S.C. § 1021(a). (R.4, Plaintiffs' Brief Supp. Mtn. Prelim. Inj. 7-10, 12-15) Plaintiffs cited to ERISA § 102(b), 29 U.S.C. § 1022(b), and to

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[6] First Amended Complaint ¶ 45. *See* ERISA § 3(16), 29 U.S.C. § 1002(16) (definition of "administrator"); *Daniel v. Eaton Corp.*, 839 F.2d 263, 266 (6th Cir.), *cert. denied*, 488 U.S. 826 (1988); *UAW v. Auto. Glass Employees Fed'l Credit Union*, 146 L.R.R.M. (BNA) 2865, 2873 (M.D. Tenn. 1994), *aff'd*, 72 F.3d 1243 (6th Cir. 1996) (action to recover benefits must be brought against plan administrator, not against employer-plan sponsor).

[7] A trust beneficiary had one cause of action at law against a trustee: he could sue at law for money that the trustee had an obligation to pay to the beneficiary immediately and unconditionally—that is, if the trustee admitted liability. *Wardle v. Central States, Southeast and Southwest Areas Pension Fund*, 627 F.2d. 820, 829 (7th Cir. 1980), *cert. denied*, 449 U.S. 1112 (1981); *Nedd*, 556 F.2d at 207. But the benefits Plaintiffs seek to recover under the terms of the benefit plan are not payable either (1) to the beneficiary, (2) immediately, or (3) unconditionally. Rather, they are paid to health care providers, at various times in the future, if the plan's coverage conditions are met.

Department of Labor regulations issued under ERISA, concerning information that is required to be in the SPD. (Plaintiffs' Brief 13) They cited cases decided under ERISA for the proposition that language in an SPD takes precedence over inconsistent language in a CBA or other plan document. *Flacche v. Sun Life Assurance Co.*, 958 F.2d 730 (6th Cir. 1992); *Edwards v. State Farm Mut. Auto Ins. Co.*, 851 F.2d 134 (6th Cir. 1988). (Plaintiffs' Brief 11, 13-14) Plaintiffs had to rely heavily on ERISA, because the only "lifetime" language in plan documents appeared in the SPDs—*not* in the CBAs. Plaintiffs' ERISA-SPD argument constituted the core of their motion for preliminary injunction. (Pet. App. 59a-60a) These are not separate claims at all.

Thus this LMRA claim is neither a simple contract case, nor separate from the ERISA claim.

d. The remedy sought is by far the more important of the two *Terry* factors. *Terry*, 494 U.S. at 565. Petitioners acknowledge they have "no adequate remedy at law" under either LMRA § 301 or ERISA. (Complaint ¶¶ 32, 33; First Amended Complaint ¶¶ 42, 43; Pet. App. 26a) They could not have obtained the preliminary injunction without establishing both an inadequate remedy at law, and irreparable injury without an injunction. (Pet. App. 26a) They seek a *permanent* (not just a preliminary) injunction directing Kelsey-Hayes and Hayes Wheels to "reinstate the health benefits . . . for the lives of retirees and spouses." (First Amended Complaint, ¶ B of each Count) Unlike pension benefits, the welfare benefits at issue in this case are not payments to the beneficiaries; normally the plan administrator makes payment directly to health care providers. All the beneficiary has to do at the doctor's office is show his plan identification card. The preliminary injunction has already been in effect for 25

months, with no trial date in sight. A permanent injunction could easily require provision of benefits for 40 or 50 years. An injunction is the quintessential equitable remedy.

Plaintiffs cannot recover "damages" of any kind. The only prayer for "damages" in their original Complaint was paragraph D of each Count, seeking mental distress damages. Damages for mental distress and anguish cannot be recovered in any action to recover benefits, under either LMRA § 301 or ERISA § 502(a). *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 140-44 (1985); *UAW v. Park-Ohio Indus.*, 687 F. Supp. 338, 342-43 (N.D. Ohio 1987), *aff'd*, 876 F.2d 894 (table) (6th Cir. 1989). Indeed, Plaintiffs stipulated to strike that prayer, recognizing that the law does not authorize mental distress damages. The District Court struck that prayer in the same Order that struck the Jury Demand. (Pet. App. 37a, 52a)

The First Amended Complaint recharacterized the prayer for "an amount equal to" the pensioners' increased share of health care expenses as one for "an amount of damages equal to." (Paragraph C of each Count) But this Court must focus not on what remedies Plaintiffs seek, but on what remedies are available to them. *Richards v. General Motors*, 850 F. Supp. 1325 (E.D. Mich. 1994). And they cannot recover damages for breach of an ERISA-regulated welfare benefit plan. ERISA limits Plaintiffs to equitable remedies. ERISA excludes recovery of compensatory damages of any kind. *Mertens*, 113 S. Ct. at 2068-70; *Russell*, 473 U.S. at 144; *Howe v. Varity Corp.*, 36 F.3d 746, 752 (8th Cir.), *clarified*, 41 F.3d 1263 (8th Cir. 1994), *aff'd*, 116 S. Ct. 1065 (1996); *Varhola v. Doe*, 820 F.2d 809, 817 (6th Cir. 1987). To the extent that LMRA might otherwise authorize recovery of damages, ERISA's exclusion of damages must control. ERISA § 514(d), 29 U.S.C.

§ 1144(d);[8] *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 375-76 (1990) (ERISA's special anti-alienation provision, § 206(d)(1), 29 U.S.C. § 1056(d)(1), controls over general remedial provision in LMRDA § 501(b), 29 U.S. C. § 501(b)); *United Steelworkers v. United Engineering, Inc.*, 52 F.3d 1386, 1394 (6th Cir. 1995) (ERISA precludes previously-existing cause of action implied from LMRA § 301); *Pension Benefit Guar. Corp. v. Alloytek, Inc.*, 924 F.2d 620, 626 (6th Cir. 1991).

e. Plaintiffs do seek to recover some money: the monthly premiums at $2.00 per month or more, the Special Age 65 benefit, and their expenditures for co-payments under the new benefit plan—for about one-third of the class, and only for the 3+ months before the preliminary injunction took effect. But not every award of monetary relief is "damages," or legal relief. *Terry*, 494 U.S. at 570-72. The Special Age 65 benefit, and the monthly premium deducted from the pension check, are money withheld by the plan administrator. Recovery of this amount is "restitution," an equitable remedy warranting no jury trial. *Id.* at 570 (recovery of money wrongfully withheld is restitutionary); *Howe*, 36 F.3d at 752; *Bair v. General Motors Corp.*, 895 F.2d 1094, 1096 (6th Cir. 1990).

Plaintiffs analogize the recovery they seek to back pay, and argue that back pay is a form of damages, hence legal. That is a misstatement of the law. The *equivalent* of back pay is damages, if it is recovered from the union in a "hybrid" § 301 case. *Terry*, 494 U.S. at 572. But back

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[8] ERISA's saving provision, § 514(d), preserves federal "law[s]" and "regulation[s]." It does not, however, preserve inconsistent judicial "decisions"—in bright contrast to § 514(c), which defines preempted "State law" as including "decisions." 29 U.S.C. § 1144(c), (d).

pay from the *employer* under an equitable statute is restitutionary, and equitable. *Terry*, 494 U.S. at 569-70; *Landgraf v. USI Film Products*, 114 S. Ct. 1483, 1490 (1994); *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 415-18 (1975); *Schwartz v. Gregori*, 45 F.3d 1017, 1022 (6th Cir.), *cert. denied*, 116 S. Ct. 77 (1995).

Moreover, restitution for 3½ months of premiums and co-payments, for one-third of the class, until the District Court entered a preliminary injunction, is "incidental to or intertwined with injunctive relief" and thus equitable, not legal. *Terry*, 494 U.S. at 571; *Tull v. United States*, 481 U.S. 412, 424 (1987); *Alexander v. Primerica Holdings, Inc.*, 819 F. Supp. 1296, 1308-09 (D. N.J. 1993); *Sprague v. General Motors*, 804 F. Supp. 931, 939 (E.D. Mich 1992) (latter two cases weighing prospective duration of injunction against retrospective period of benefit loss in which expenses incurred).

Petitioners' argument, if accepted, would produce absurd consequences. Plaintiffs filed their motion for preliminary injunction on December 23, 1993—the last court day before Christmas, and four court days before the benefit changes went into effect. Presumably they did this for tactical reasons, to impair Kelsey-Hayes' ability to respond. If, instead of delaying six months, Plaintiffs had brought this action in May 1993, and the preliminary injunction hearing had been held in October or November 1993, then the benefit changes would not have gone into effect. Under their argument there would be no co-payments, deductibles or monthly contributions, and no "damages," hence no jury trial.

Whether an action is equitable or legal should not turn on how diligent, or how busy, Plaintiffs' counsel is; how crowded the court's docket is; or on the effect of tactical delay. And it does not: the right to jury trial turns on

the nature of the issue to be tried, and the remedy sought. *Terry*, 494 U.S. at 567. The fact that a tiny fraction of the benefits sought are now allegedly past due, solely because Plaintiffs' attorney appears to have deliberately delayed for strategic reasons in filing the case and motion, does not affect the equitable nature of this action. An equitable claim for benefits does not become legal just because part of the benefits are already due, or because the plaintiff waits until after the benefit reduction goes into effect to seek an injunction. *Borst v. Chevron Corp.*, 36 F.3d 1308, 1324 (5th Cir. 1994), *cert. denied*, 115 S. Ct. 1699 (1995); *Bair*, 895 F.2d at 1097; *Cox v. Keystone Carbon Co.*, 894 F.2d 647, 649-50 (3d Cir.), *cert. denied*, 498 U.S. 811 (1990); *Sprague*, 804 F. Supp. at 935.

Moreover, even under Petitioners' argument, the majority of the class has no right to jury trial under LMRA § 301. No changes were implemented in January 1994 for retirees from the Brighton-Milford, Michigan unit. They have incurred no out-of-pocket expenses, suffered no "damages"; they seek only declaratory and injunctive relief. UAW Local 78 (the Detroit/Romulus bargaining unit, by far the largest) agreed with Kelsey-Hayes and Hayes Wheels on February 1, 1994, to reinstate the old benefit plan retroactive to January 1, 1994, with no co-pays, deductibles or contributions—except a $2.00/month contribution, deducted from the pension check, but only for pensioners who are over age 65 and Medicare-eligible. Thus no Detroit or Romulus pensioner incurred out-of-pocket expenses; and recovery of the $2.00 monthly contribution is clearly restitutionary, not damages. So under Petitioners' view, even though they assert the *same claim* on behalf of retirees from all five bargaining units, and seek the *same permanent injunction* on behalf of all, that claim is "equitable" when asserted on behalf of Detroit,

Romulus, Brighton and Milford pensioners, but "legal" when asserted by SPECO, Heintz and Gunite pensioners. Such a result would be absurd. But it is the inevitable conclusion of Petitioners' argument.

f. This Court has twice confirmed that a monetary award "incidental to or intertwined with injunctive relief" is equitable in nature. *Terry*, 494 U.S. at 571; *Tull*, 481 U.S. at 424-425. In *Tull* the Court, although recognizing this long-established principle, held that the award of monetary relief was not incidental in *that* case. That case involved a preliminary injunction of short duration and limited effect, and a civil penalty of $22 million. In *Tull* it was the injunction that was incidental, not the money. But the injunction is the engine that drives this case, as the court below recognized.

Lytle v. Household Mfg., Inc., 494 U.S. 545, 550 (1990); *Curtis v. Loether*, 415 U.S. 189, 193 (1974); and *Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962), on which Petitioners rely, are irrelevant to the analysis. Each holds that when a legal claim and a separate equitable claim are joined, a party is entitled to a jury trial on the legal claim; and *Lytle* holds that jury trial applies to overlapping elements of the equitable claim. In *Curtis* and in *Dairy Queen*, the Court held that a legal *claim* could not be characterized as "incidental" to a separate equitable claim. But this case does not involve separate claims. Moreover, *Curtis* and *Dairy Queen* did not disturb the long-established rule, later recognized in *Terry* and in *Tull*, that monetary *relief* is equitable if it is "incidental to or intertwined with" equitable relief on the same claim. This Court made that distinction carefully in *Tull*; the court below made that distinction just as carefully and correctly. Thus, none of the three cited cases is useful in determining whether a particular claim is legal or equitable in the first place.

Petitioners argue that this Court did not mean what it said in *Tull* and *Terry*; they argue that the "incidental" rule applies only when the plaintiff seeks only equitable relief, either by choice or because the statute provides only equitable jurisdiction (Pet. 9) Petitioners did not make that argument in the courts below. That novel argument notably is not supported by any statement in *Tull* or in *Terry*, or by any other precedent: Petitioners cite none for it.[9] In *Tull*, the plaintiff sought both legal and equitable relief: civil penalties and a preliminary injunction. *Tull* held that, when the plaintiff seeks both, the court can and must determine whether the monetary relief sought really is "incidental to or intertwined with" equitable relief. And the court cannot just take the plaintiff's word for it.

The court below correctly stated, and very carefully applied, the rule of law laid out in *Tull* and *Terry*.

Crocker v. Piedmont Aviation, Inc., 49 F.3d 735, 749 (D.C. Cir.), *cert. denied*, 116 S. Ct. 180 (1995), purported to make the same error that Petitioners urge upon this Court and the Court below: failing to distinguish between *Dairy Queen's* focus on separate "claims" and *Tull's* focus on incidental "relief" on the same claim. But *Crocker* really turned on: (1) the fact that the statute involved, unlike ERISA, did not confine the plaintiff to equitable remedies, 49 F.3d at 748; and (2) his claim for backpay was not actually incidental to his equitable prayer for reinstatement as a pilot—the latter moot because he was then nearly 70 years old, *id.* at 748 n.3. The quantitative weighing of relief in *Crocker* is exactly the weighing this Court performed in *Tull*.

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[9] Petitioners' argument, even if it held water, would not prove the court below wrong, because ERISA does limit Plaintiffs to equitable remedies.

II.

THE DECISION BELOW DID NOT CREATE A SPLIT BETWEEN THE CIRCUITS.

a. Petitioners' claim that the decision below raised a conflict with a decision of another United States Court of Appeals is a misstatement of law. The decision below was consistent with the uniform precedent of all the Circuit Courts of Appeal. No Circuit Court of Appeals has ever allowed a jury trial in an action to recover benefits—with one exception, an Eleventh Circuit case decided a few weeks *after* this one.

Every Circuit Court of Appeals to consider the question has held that jury trial is not available in an action to recover benefits, or other action by a plan beneficiary against a plan fiduciary. The more recent decisions recognize that *Terry* and *Mertens* confirm the no-jury rule. *See, e.g., Sullivan v. LTV Aerospace & Defense Co.*, ___ F.3d ___, 1996 U.S. App. LEXIS 10253, *21 (2nd Cir. May 6, 1996) (no jury trial in action to recover ERISA benefits, even where only monetary recovery is sought); *Houghton v. SIPCO, Inc.*, 38 F.3d 953, 957 (8th Cir. 1994) (*Mertens* confirms rule of non-jury trial); *Borst*, 36 F.3d at 1324 (*Terry* requires non-jury trial in benefits case); *Spinelli v. Gaughan*, 12 F.3d 853, 857-58 & n.3 (9th Cir. 1993); *Biggers v. Wittek Indus.*, 4 F.3d 291, 297-98 (4th Cir. 1993); *Blake v. Unionmutual Stock Life Ins. Co.*, 906 F.2d 1525, 1526 (11th Cir. 1990); *Bair*, 895 F.2d at 1097; *Daniel*, 839 F.2d at 268; *Brown v. Retirement Comm. of Briggs & Stratton*, 797 F.2d 521, 528 (7th Cir. 1986), *cert. denied*, 479 U.S. 1094 (1987); *Turner v. CF & I Steel Corp.*, 770 F.2d 43, 46-47 (3d Cir. 1985), *cert. denied*, 474 U.S. 1058 (1986); *Katsaros v. Cody*, 744 F.2d 270, 278 (2d Cir.), *cert. denied*, 469 U.S. 1072 (1984); *Wardle*, 627 F.2d at 829. Several of these cases—*Daniel*, *Brown*, and *Wardle*—

involved benefit plans established through collective bargaining. *Daniel* involved an alleged breach of a collectively-bargained pension agreement with the UAW. The Third and Fifth Circuits have ruled, even before ERISA, that an action against a plan fiduciary under LMRA or LMRDA was equitable, with no jury trial allowed. *Nedd*, 556 F.2d at 207; *Norris*, 383 F.2d at 740-41.

Petitioners fail to cite any of the dozens of decisions that disallow jury trials in actions to recover benefits—an omission particularly glaring in the cases of *Nedd*, *Norris*, *Daniel*, *Wardle* and *Brown*, all of which involved collectively-bargained benefit plans. The claim of a split between circuits is a misstatement of the law.

b. Petitioners claim that the Seventh Circuit has concluded that a jury trial is available in an action for retiree health benefits brought under both the LMRA and ERISA, *citing Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 609 (7th Cir. 1993) (*en banc*), *cert. denied*, 114 S. Ct. 291 (1993); *Senn v. United Dominion Indus., Inc.*, 951 F.2d 806, 814 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 2992 (1993). (Pet. at 14 & n.10) That is a misstatement of the law.

The rule in the Seventh Circuit is that the plaintiff cannot have a jury trial in an action to recover benefits, even if part of the benefits are already due, and even if the benefit plan is the product of collective bargaining and enforceable under LMRA § 301. *See Wardle*, 627 F.2d at 829; *Brown*, 797 F.2d at 528. The *Wardle* case is the seminal case nationally. It involved a benefit plan established through collective bargaining, and the Plaintiff sought "compensatory damages", *i.e.*, the present actuarial value of his claimed pension, some of which was (he alleged) already due. The court found the action to be an action in trust seeking equitable relief.

The *Senn* panel stated in dictum that jury trial was available in that case. But the *holding* in *Senn* was that the District Court committed reversible error in submitting the case to a jury: the case should have been decided as a question of law, and defendants' motions for summary judgment and directed verdict should have been granted. *Senn*, 951 F.2d at 815. That holding made it unnecessary to address the jury trial question. *Sofo v. Pan Am. Life Ins. Co.*, 13 F.3d 239, 241-42 (7th Cir. 1994). As dictum, the *Senn* discussion has no *stare decisis* effect in the Seventh Circuit; *Wardle* and *Brown* do, in the collective bargaining context. The rule in the Seventh Circuit remains the same after *Senn*: no jury trials in actions to recover benefits, even if part of the benefits are already due and the plaintiff calls it "damages", even where the claim is brought under the LMRA and based on a collective bargaining agreement. *Reich v. Continental Casualty Co.*, 33 F.3d 754, 755-56 (7th Cir. 1994), *cert. denied*, 115 S. Ct. 1104 (1995) (suit to recover money is restitution, and necessarily equitable, because ERISA provides only equitable relief, so no jury trial, *citing Wardle*); *Sofo*, 13 F.3d at 241; *Meredith v. Allsteel, Inc.*, 1994 U.S. Dist. Lexis 9861, *14-16 & n.13 (N.D. Ill. July 19, 1994) (striking jury demand where identical equitable relief recovery of pension benefits sought under LMRA and ERISA; cites *Wardle*, *Brown*, and *Sofo*, and distinguishes *Senn* on basis of relief sought).

The holding in *Bidlack* was that the district court erred in granting summary judgment; jury trial was again simply not an issue.

Thus the decision below did not create a conflict with any decision—not one—of any other United States Court of Appeals. Petitioners' claim of a conflict between the Sixth and Seventh Circuits is a misstatement of law.

c. A conflict arose several weeks later, when the Eleventh Circuit Court of Appeals decided *Stewart v. KHD Deutz Corp.*, 75 F.3d 1522 (11th Cir. 1996). But *Stewart* does not create a conflict significant enough to warrant granting a writ of certiorari either in this case, or in *Stewart* if one is filed.

First, except for *Stewart*, all the Courts of Appeals agree: no jury trial is allowed in an action to recover benefits. Even the Eleventh Circuit agrees that jury trial is improper in an ERISA-only action to recover benefits. *Stewart*, 75 F.3d at 1527; *Blake*, 906 F.2d at 1526. The *Stewart* case presents a sport, not a split. There is no real division of opinion on this issue. One wrong decision out of dozens—one Circuit divided against itself—does not present a conflict significant enough to warrant this Court's attention.

Second, the Eleventh Circuit should be given an opportunity to heal itself, by overruling *Stewart en banc* in light of the Sixth Circuit decision in this case. Unfortunately, that Court may not get the chance in *Stewart* itself. In that case, KHD Deutz has filed a petition for panel rehearing, but has not suggested rehearing *en banc*. The briefs failed to make the critical distinction between *Tull* and *Dairy Queen*, between incidental relief and incidental claims; failed to inform the Court that the statement in *Senn* was mere dictum, and the actual Seventh Circuit rule exactly the opposite; and failed to inform the Court of *Nedd*, *Norris*, *Daniel*, *Wardle*, *Brown*, and other jury-trial cases involving collectively-bargained benefit plans. *Stewart* was wrongly decided: but wrongly decided, at least in part, because the issue was not adequately presented to that Court—and apparently would not be adequately presented to this Court. The Eleventh Circuit may have to await another day, and proper briefing, to correct its error *en banc*.

Third, the error in *Stewart* is unlikely to cause significant harm to future litigants if left temporarily uncorrected. Benefit cases involving requests for jury trials under the LMRA will arise less frequently in the Eleventh Circuit; they will rise more frequently in the more populous, more industrialized—and more unionized—Third, Sixth, Seventh and Eighth Circuits, all of which correctly bar jury trials in such circumstances.

There is therefore no need for the Court to consider this issue at this time.

Respondents therefore urge the Court to deny the petition for writ of certiorari in this case, and in *Stewart* if one is filed.

Respondents further urge the Court not to grant a petition in *Stewart* unless it is accompanied by this case, in order to assure an adequate presentation of the issues to this Court.

CONCLUSION

Respondents KELSEY-HAYES COMPANY and HAYES WHEELS INTERNATIONAL, INC. pray this Court to DENY the Petition for Writ of Certiorari.

Respectfully submitted,

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(3)

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

JOSEPH GOLDEN, ANGELO DEITOS, EDWARD JONES, IDA THOMASON, LUTHER PALMER, CAROLINE FORYS, JOSEPH THOMAS, JOHN HOYLE, ARTHUR SALLIS, THELMA SONGER, JOHN W. GALLOWAY and ROGER FARRAR, on behalf of themselves and a class of persons similarly situated,

Petitioners,

v.

KELSEY-HAYES COMPANY and HAYES WHEELS INTERNATIONAL, INC.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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PETITIONERS' REPLY BRIEF

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PETITIONERS' REPLY BRIEF

Stripped of its irrelevancies and gratuitous attacks, Respondents' primary response in their Brief in Opposition is that there is no right to a jury trial in § 301 actions to recover collectively bargained benefits when there is an appended ERISA claim. This is a rather remarkable, and unhelpful, submission at this stage in the proceedings, since the court below *rejected* this argument summarily (Pet. App. 19a-20a, n.11) and no other federal appellate court has accepted it.

Respondents' goal is to obcuscate the important constitutional principle at stake here. But, the unalterable fact remains—absent direction from this Court now, the current split in Seventh Amendment jurisprudence created by the panel majority below will sow confusion in trial courts in all civil actions where a request for discretionary injunctive relief is added to a legal claim for damages.

It is necessary to first briefly refocus the inquiry here on its proper subject. The collective bargaining agreements between Kelsey-Hayes and the UAW obligate Kelsey-Hayes to provide retirees with medical benefits during their retirement. The retirees assert that these contractual provisions require that the benefits be maintained during their *entire* retirement, i.e. until their death. Respondents belatedly claim that those contractual provisions, read in conjunction with general durational language of the agreements, permit them to modify those benefits. The jury will therefore be required to interpret the agreements to determine the intended duration of the promise for retiree medical benefits.

Count One of the Complaint was brought pursuant to Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a), which provides for "[s]uits for violation of contracts between an employer and a labor organization . . . ." Count Two was brought under § 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B), "to recover benefits due" and "to enforce . . . rights under the terms of the plan."

Settled legal principles define this litigation. In enacting § 301, Congress authorized federal courts to develop substantive federal common law, based on federal labor policy, to be applied to the enforcement of labor contracts. *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 456 (1957). This federal common law contemplates contract actions by retirees to recover negotiated medical benefits. "Under established contract principles, vested retirement rights may not be altered without the pensioner's consent. . . . The retiree, moreover, would have a federal remedy under § 301 of the Labor Management Relations Act for breach of contract if his benefits were unilaterally changed." *Chemical Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 181 n.20 (1971) (citations omitted).

Count One of the Complaint presents precisely that type of "federal remedy under § 301 . . . for breach of contract." That Count sought *inter alia*, "damages equal to all costs and expenses sustained by class members and eligible dependents as a result of [Kelsey-Hayes'] refusal to provide health care benefits negotiated by Kelsey-Hayes and the [Union]" and described the types of out-of-pocket costs that would be incurred by retirees as a result of Kelsey-Hayes' breach of contract.

Count Two was brought under § 502(a)(1)(B) of ERISA and sought identical relief.

The retirees also sought, and obtained, a preliminary injunction requiring Kelsey-Hayes to maintain their medical benefits without modification during the litigation.[1] No trial has been scheduled.

The district court struck the retirees' jury demand and the Sixth Circuit denied the retirees' mandamus petition to reinstate it. The Sixth Circuit held that the parallel ERISA Count did *not* deprive the retirees of the right to a jury trial on the contract-enforcement issues, but that

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[1] The retirees also seek a permanent injunction. Obviously, no decision on that request will be made until the jury's determination of the merits of the retirees' contractual claim.

the preliminary injunction, and the alternative prayer for a permanent injunction, *did* do so. Oddly, Respondents argue more strenuously that the court below was *wrong* in failing to strike the jury demand based on the presence of the parallel ERISA Count, than that it was *right* in striking the jury demand because of the claim for injunctive relief. The analysis advanced in the Petition—that two dramatically different readings of the dicta from *Teamsters v. Terry*, 494 U.S. 558 (1990) have developed in the circuits on an important and recurring question of constitutional dimensions (Pet. 8-9)—stands unrefuted.

1. Rather than defend the Sixth Circuit's decision on its own terms, Respondents assert that the present breach of contract case is an equitable action for breach of trust. (Resp. Br. 7-16). Respondents' theory, unsupported by law or logic, is that ERISA has somehow superseded contract actions under § 301 when those actions are based on collectively bargained "welfare benefit plans" that are also subject to ERISA.

The Sixth Circuit rejected this argument summarily. (Pet. App. 20a, n.11). An identical argument was rejected in *Stewart v. KHD Deutz of America Corp.*, 75 F.3d 1522, 1526-27 (11th Cir. 1996).[2] No federal appellate decision of which Petitioners are aware has reached the result championed by Kelsey-Hayes. ERISA itself, of course, does not support this theory. Section 514(d) specifically provides that nothing in ERISA "shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States . . . or any rule or regulation issued under any such law." 29 U.S.C. § 1144(d).

The cases cited by Respondents in support of its unique theory involve a variety of unrelated issues, mainly concerning suits by or against pension plan trustees and

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[2] In *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 604 (7th Cir.) (en banc), *cert. denied*, 114 S. Ct. 291 (1993), the lead opinion noted that ERISA provides an alternative jurisdictional basis to § 301, "but . . . has little bearing on the issues in contention."

fiduciaries in the context of multi-employer pension plans. (Resp. Br. 9-10). There is no question that certain actions involving pension benefits, even benefits created by collective bargaining, are equitable in nature. Thus, cases cited by Respondents which address denial of benefits by trustees under the terms of a plan,[3] breach of fiduciary duties,[4] or miscellaneous matters regarding fund trustees generally,[5] may well implicate traditional equitable principles. Those cases are not at all apposite here where Respondents, acting in a corporate capacity, breached the labor contract by changing collectively bargained medical benefits without the consent of the retirees.[6] This was a contract action under § 301 before ERISA, *Chemical Workers v. Pittsburgh Plate Glass, supra,* and it remains a contract action under § 301 for which ERISA provides an alternate jurisdictional basis.

Respondents cite *Steelworkers v. Connors Steel Co.,* 855 F.2d 1499 (11th Cir. 1988), *cert. denied,* 489 U.S. 1096 (1989), and *Steelworkers v. New Jersey Zinc Co., Inc.,* 828 F.2d 1001 (3d Cir. 1987) for the proposition that an action under § 301 "to recover benefits is equitable in nature." Neither case says anything of the sort. In *Con-*

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[3] *Porter v. Central States Pension Fund,* 98 L.R.R.M. (BNA) 3210 (N.D. Iowa 1978); *Davis v. Huge,* 91 L.R.R.M. (BNA) 2234 (E.D. Ky. 1975); *Sichko v. Lewis,* 191 F. Supp. 68 (W.D. Pa. 1960).

[4] *Varity Corp. v. Howe,* 116 S. Ct. 1065 (1996); *Nedd v. Mine Workers,* 556 F.2d 190 (3d Cir. 1977); *Local 92, Ironworkers v. Norris,* 383 F.2d 735 (5th Cir. 1967).

[5] *Milwaukee Brewery Workers' Pension Fund v. Jos. Schlitz Brewing Co.,* 115 S. Ct. 981 (1995) (interest accrued under Multiemployer Pension Plan Amendment Act); *Central States Pension Fund v. Central Transport, Inc.,* 472 U.S. 559 (1985) (employer audit by trustees); *Franchise Tax Board v. Construction Laborers Trust,* 463 U.S. 1 (1983) (suit by state against trustees to collect personal income taxes); *NLRB v. Amax Coal Co.,* 453 U.S. 322 (1981) (trustees not within definition of employers under NLRA).

[6] *Adams v. Avondale Industries, Inc.,* 905 F.2d 943, 949 (6th Cir. 1990) (citing cases) (employer's decision to modify welfare benefits not judged by fiduciary standards).

nors, the Eleventh Circuit merely held that § 301 does not permit recovery of "extra-contractual compensation and punitive damages." 855 F.2d at 1510. In *New Jersey Zinc,* the Third Circuit did not even reach that issue because the union there "failed to preserve" it. 828 F.2d at 1004-5.

Respondents cite no case which holds that ERISA supersedes or replaces § 301 as a general matter. Cases which Respondents do not cite specifically hold that ERISA does *not* supersede § 301 even for pension claims, when the benefits sought are in excess of those guaranteed under ERISA. *Steelworkers Local 2116 v. Cyclops Corp.,* 860 F.2d 189, 197 (6th Cir. 1988); *UAW v. Keystone Consolidated Industries, Inc.,* 793 F.2d 810, 814 (7th Cir.), *cert. denied,* 479 U.S. 933 (1986); *Murphy v. Heppenstall Co.,* 635 F.2d 233, 239 (3d Cir. 1980), *cert. denied,* 454 U.S. 1142 (1982).[7] Of course because ERISA "does not regulate the substantive content of welfare benefit plans," *Metropolitan Life Ins. Co. v. Massachusetts,* 471 U.S. 724, 732 (1985), there is no rationale whatsoever supporting Respondents' theory that courts should develop a new federal common law for collectively bargained benefits under ERISA. It is not a coincidence that every circuit to address the specific

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[7] Respondents cite *Steelworkers v. United Engineering, Inc.,* 52 F.3d 1386 (6th Cir. 1995), in support of a similar argument that ERISA "precludes previously-existing cause[s] of action implied from LMRA § 301." (Resp. Br. at 16). *United Engineering* addressed recent amendments to ERISA which provide that the Pension Benefit Guaranty Corporation (PBGC) has the exclusive authority over supplemental pension benefits. Because of that exclusive grant of authority to the PBGC, the Sixth Circuit dismissed the union's direct contract claim while noting that before Congress enacted the amendments, the field had been addressed by the federal common law of § 301. 52 F.3d at 1394. Nothing in that case even suggests that ERISA similarly bars attempts by retirees to enforce contractual promises regarding medical benefits, which ERISA does not substantively regulate and over which the PBGC has absolutely no role.

question has concluded that retirees seeking to enforce negotiated medical benefits may proceed under § 301. *See e.g. Stewart v. KHD Deutz of America Corp.*, 75 F.3d 1522, 1526 (11th Cir. 1996); *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 604 (7th Cir.), *cert. denied*, 114 S. Ct. 291 (1993); *Armistead v. Vernitron Corp.*, 944 F.2d 1287, 1298 (6th Cir. 1991); *Paperworkers v. Champion International Corp.*, 908 F.2d 1252, 1255-56 (5th Cir. 1990); *Keffer v. H.K. Porter Co., Inc.*, 872 F.2d 60, 62 (4th Cir. 1989).

2. Respondents claim that, in *Teamsters v. Terry*, 494 U.S. 558 (1990), the Court rejected the principle that § 301 actions are analogous to "breach of contract, and thus legal." (Resp. Br. at 10). Respondents are absolutely wrong. In *Terry*, the Court addressed a "hybrid" duty of fair representation/breach of contract action. In such an action, the employee is required to prove "two facts to recover money damages"—employer breach of the labor agreement and union breach of its duty of fair representation. 494 U.S. at 564. During the first phase of its Seventh Amendment analysis, the Court concluded that "[t]he § 301 issue . . . is comparable to a breach of contract claim—a legal issue." 494 U.S. at 569-70. The Court determined that the *other* element—the fair representation claim—was equitable. Faced with both an equitable and a legal element in a single cause of action, the Court found itself in "equipoise as to whether [the employees] are entitled to a jury trial." 494 U.S. at 570.

Here, there is no "equipoise." There is no equitable element. There is only a straight "breach of contract claim—a legal issue." As the Court stated in *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 477 (1962), "it would be difficult ao conceive of an action of a more traditionally legal character."

Respondents berate *Petitioners* at every turn, claiming, *inter alia*, that they ignore the kind of contract involved

here,[8] that the contracts have expired[9] and that Petitioners themselves are not parties to the contracts.[10] (Resp. Br. 11-14). The issue presented for review here is clearly framed by the decision of the Sixth Circuit. This Court should not have to cut through the thicket of Respondents' arguments in order to refocus on this distinct and important issue. Of course, Respondents' attempt to obscure the issue is, in any event, unavailing. The Seventh Amendment analysis of the panel majority below, based on a misreading of *Terry*, is not limited to § 301 actions for collectively bargained benefits. It applies universally to all actions where a legal claim for damages is supplemented by a request for equitable relief. Unless this Court resolves the conflict, based upon conflicting readings of *Terry*, lower courts will have to wrestle with the conflict in innumerable situations.

3. More importantly, Respondents make no real effort to reconcile the split in the circuits.

Respondents' attempt to distinguish the conflicting decision in *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735 (D.C. Cir.), *cert. denied*, 116 S.Ct. 180 (1995) is infected by Respondents' erroneous assertion that the parallel ERISA Count has somehow deprived the court of its traditional § 301 jurisdiction. Thus, Respondents claim that *Crocker* is distinguishable because the statute at issue there, "unlike ERISA, did not confine the plaintiff to

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[8] It is exactly the same "kind of contract" addressed by the Seventh Circuit in *Senn v. United Dominion Industries, Inc.*, 951 F.2d 806 (7th Cir. 1992), *cert. denied*, 113 S.Ct. 2992 (1993) and *Stewart v. KHD Deutz of America Corp.*, 75 F.3d 1522 (11th Cir. 1996) which constitute the conflict in the circuits on this issue.

[9] This assertion, of course, merely *raises*, rather than answers, the question of whether the parties intended the obligation to provide retiree medical benefits here to *survive* th expiration of the contracts.

[10] Individuals as well as labor organizations can bring actions under § 301. *Smith v. Evening News Ass'n*, 371 U.S. 195, 200 (1962). Retirees can sue under § 301 when their former employer alters their medical benefits. *Chemical Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 181 n.20 (1971).

equitable remedies." (Resp. Br. at 20). But neither the court below—nor any other appellate court—has held that § 301, when invoked to enforce contractual promises by an employer to provide retiree medical benefits, confines a plaintiff to equitable remedies. In fact, Congress saw damages as a principal form of relief available under § 301. *See generally Textile Workers v. Lincoln Mills,* 353 U.S. at 485-546 (1957) (setting forth legislative history).

Respondents do not even attempt to harmonize the Seventh Circuit's decision in *Senn v. United Dominion Industries, Inc.*, 951 F.2d 806 (7th Cir. 1992), *cert. denied,* 113 S.Ct. 2992 (1993). Instead, Respondents argue that the decision in *Senn* is dicta. The Seventh Circuit apparently did not consider it so. The first of the three issues that the "appeal raise[d]" was "[w]hether the trial court erroneously permitted a jury trial" on the question of whether the labor agreements there permitted the employer to modify the retirees' medical coverage. 951 F.2d at 813. The Seventh Circuit specifically held that, even though the retirees were "primarily seeking injunctive relief," the Seventh Amendment guaranteed the right to a jury trial because "[i]t is well settled that when legal and equitable relief are separately authorized by statute, and the 'legal claim is joined with [the] equitable claim, the right to jury trial on the legal claim, including all issues common to both claims, remains intact. The right cannot be abridged by characterizing the legal claim as 'incidental' to the equitable relief sought.' " 951 F.2d at 813-14 (quoting *Tull v. United States,* 481 U.S. 412, 424-425 (1987) which quoted, in turn, *Curtis v. Loether,* 415 U.S. 189, 196 n.11 (1974). This holding is in direct conflict with the decision below, where the jury trial was lost precisely because the legal claim was characterized as "incidental" to the equitable claim. (Pet. App. 24a).

Other courts have not considered *Senn* to be dicta. The Eleventh Circuit in *Stewart v. KHD Deutz of America Corp.*, 75 F.3d 1522, 1528 (11th Cir. 1996), "joined

the Seventh Circuit in holding that plaintiffs are entitled to a jury trial in hybrid LMRA/ERISA actions." The district court in *In re Unisys Savings Plan Litigation,* 148 L.R.R.M. (BNA) 2405 (E.D. Pa. 1995), relied squarely on *Senn* in denying the employer's motion to strike the jury demand in the § 301 count, after rejecting the employer's claim that ERISA displaced § 301. The employer did not appeal. *In re Unisys Savings Plan Litigation,* 74 F.3d 420, 432 n.8 (3d Cir. 1966).

Respondents concede that the decision below conflicts with *Stewart v. KHD Deutz of America Corp.* (Resp. Br. 24). They claim, however, that it is unlikely to recur since the Eleventh Circuit decides fewer retiree medical benefit cases.

In fact, the significance of the confusion in the lower courts cannot be so easily dismissed. As the law stands now, jury trials are available in the Seventh and Eleventh Circuits in § 301 actions involving retiree medical benefits. Jury trials are not available in identical circumstances in the Sixth Circuit which, for demographic reasons, has had more retiree health litigation than any other circuit. And these disparate approaches are not limited to cases arising under § 301 or to circuit court boundaries. The Sixth Circuit's misreading of *Terry* is that jury trials are not available any time that a court characterizes the legal issue as merely "incidental" to the equitable issue.

Finally, this confusion is not limited to the courts of appeals. The two leading commentators on civil procedure have developed divergent approaches to this general issue, reflecting the different approaches that have now developed in the lower courts. Thus, Professors Wright and Miller conclude that "it appears that the constitutionally required solution in the situations in which a single issue may be either legal or equitable depending on the remedy awarded is to have the jury present to decide the issue, even though the court then may have to determine for itself whether to grant relief of a type historically equitable." Wright & Miller, *Federal Practice*

and Procedure: Civil 2d, (West 1994) § 2306, pp. 74-75. Even more to the point, "it now seems clear that the right of the parties to have a jury trial upon demand cannot be defeated by the fact that the claim for specific performance is joined with the claim for damages." *Id.* § 2309, p. 86. On the other hand, Professor Moore has concluded that "[w]hen the plaintiff seeks specific performance, and alternatively damages, the question is . . . complicated. . . . Since the plaintiff has expressed a preference for specific performance, certainly he cannot complain that the trial of the equitable claim has deprived him of a jury trial on the issue of breach." *Moore's Federal Practice,* ¶ 38.21, p. 38-193.

If, in the unlikely event that, by the dicta in *Terry,* the Court intended to overrule *Beacon Theatres, Inc. v. Westover,* 359 U.S. 500 (1959), *Dairy Queen* and *Curtis v. Loether,* while re-emphasizing the fundamental importance of the Seventh Amendment right ot a jury trial, lower courts are entitled to be specifically informed at the earliest possible moment. That moment is when, as now, a conflict in the courts of appeals first clearly appears. The passage of time will only spread the confusion and result in the denial of a fundamental constitutional right to intervening litigants.

Seventh Amendment jurisprudence is currently in disarray on the question presented by the decision below. It is time for this Court to dispel the confusion that now prevails in the circuits on this important constitutional question.

CONCLUSION

For the foregoing reasons, and those contained in the Petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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